

STANDARD TERMS AND CONDITIONS OF SALE OF GOODS AND SUPPLY OF SERVICES.



1. INTERPRETATION

- 1.1 In these Conditions:
"Contract" means the contract between the Supplier and the Client formed by acceptance by the Supplier of the Client's order pursuant to these terms and conditions;
"Client" means the person, firm or company that purchases Services from the Supplier;
"Supplier" means This and That 95 Limited T/A The Theme Group whose registered office is at 16 Ridge Road, London, N21 3EA, England, Company Registration Number 03092394;
"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, logos, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
"Payment Milestones" means any deliverable-linked review of the Services on a date by which a part of the Services are due to be completed in conjunction with scheduled payment instalments;
"Retainer" a Contract for the Supplier to provide regular specified services to the Client;
"Services" means the design services which the Client requires the Supplier to undertake, including those undertaken as part of a Retainer;
- 1.2 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in this Contract are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SUPPLY OF SERVICES

- 2.1 The Supplier is experienced in execution of the Services and has the skill, expertise and knowledge to advise and to fulfil the Client's particular design requirements.
- 2.2 The Client wishes to rely wholly and exclusively on the Supplier's skill, expertise and knowledge to fulfil the Client's particular design requirements as specified by the Supplier to its satisfaction and approved by the Client.

3. FORMATION OF THE CONTRACT

- The Client's purchase order or a written or emailed order constitutes an offer by the Client to purchase the Services specified in it on these conditions; accordingly the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to a purchase order or written or emailed request shall establish a contract for the supply and purchase of those Services on these conditions. The Client's standard terms and conditions (if any) attached to or enclosed with or referred to in any order shall not govern this Contract.

4. ACCEPTANCE OF CONDITIONS

- These conditions shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in or referred to in the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing. No addition to, variation of or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

5. CLIENT'S REQUIREMENTS

- Upon execution of this Contract the Client will be solely responsible for properly communicating the Client's requirements in respect of the Services to the Supplier and the Supplier discuss the same with the Client, and the designing and effecting the implementation of the same and the Client will agree suitable dates for its completion.

6. PRICE

- 6.1 All prices quoted are valid (subject to the provisions of clause 6.2) for 30 days from the date of the quote only or until earlier acceptance by the Client after which time they may be altered by the Supplier without giving notice to the Client.
- 6.2 The Supplier reserves the right by giving notice to the Client at any time before completion of the Services (or completion of an element of the Services required under the relevant Payment Milestone) to increase the price of the Services and the final requirements to reflect any increase in the cost to the Supplier which is due to any change in dates, quantities or specifications for the Services which are requested by the Client or any delay caused by any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions, and the Supplier reserves the right to levy an additional charge for labour-related costs should urgent jobs be required outside normal working hours.
- 6.3 The price is exclusive of any applicable value added tax and where applicable, additional client modifications, purchase of images and delivery which the Client shall be additionally liable to pay to the Supplier.

7. PAYMENT

- 7.1 The Client shall pay the price of the Services on the dates and/or Payment Milestones agreed between the Supplier and Client and within 30 days following the date of the invoice.
- 7.2 Upon acceptance of any quote from the Supplier, the Client is required to pay up to 50% of the total amount stated in the quotation unless otherwise agreed in writing with the Supplier. The remainder of the total amount is payable in accordance with clause 7.3.
- 7.3 The Supplier shall be entitled to invoice the Client for the price of the Services;
- 7.3.1 once the Services have been completed; OR
- 7.3.2 for any Services longer than one month in duration, including where the Services are delayed by the Client, on a 30 day rolling basis for any part of the Services which have been completed; OR
- 7.3.3 in accordance with any Retainer or Payment Milestones or any other terms agreed between the parties.
- 7.4 If the Client has a Retainer with the Supplier or where the Services are undertaken on a frequent basis, the Client will be invoiced monthly in advance. The Supplier shall use its reasonable endeavours to invoice the Client within 7 days of the start of each month.
- 7.5 The Client has 7 days from receipt of any invoice in which to raise any query or dispute.
- 7.6 If the Client fails to make any payment of any undisputed invoice by the date it is due then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
- 7.6.1 withdraw Services to the Client with immediate effect;
- 7.6.2 appropriate any payment made by the Client to such of the Services as the Supplier may think fit, including in satisfaction of any existing sums due to the Supplier by the Client;
- 7.6.3 charge the Client interest (both before and after any judgment) on the amount unpaid at the rate of 3% per annum above the Lloyds Bank PLC base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 7.7 If any monies are outstanding and overdue for payment to the Supplier, the Supplier reserves the right to terminate or suspend any other Services or orders for the Client until all monies are paid in full.

8. DELIVERY

- 8.1 Delivery of the Services shall occur once the Supplier has delivered or made available to the Client or to any third party to whom the Services are to be delivered ("Delivery").
- 8.2 If, within 14 days following Delivery the Client has not disputed or confirmed Delivery of the Services, the Supplier shall deem the Services to be complete and accepted by the Client ("Acceptance").
- 8.3 Following Acceptance, the Supplier is not responsible for any further enhancements, amendments or repairs to the Services unless where specified as part of the Services in the quotation. Any further work undertaken by the Supplier does not form part of any previous Services delivered by the Supplier unless stated.
- 8.4 Where the Services has any dependency upon third party services, software or functionality, the Supplier is not responsible for any impact to the delivery timescales caused by any third party.
- 8.5 With regard to any graphics service element pursuant to the Services requiring the delivery of any tangible goods, should this be appropriate, from the Supplier to the Client is to take place through the medium of a courier service (to be agreed between the parties), file transfer or email, depending on the specific nature of the Services required.
- 8.6 Any dates for quoted delivery of any goods (produced through the execution of the Services) are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the contract unless previously agreed by the Supplier in writing. The goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Client and upon acceptance of the advance date by the Client.

9. RISK AND PROPERTY

- If tangible goods are to be delivered to the Client, risk in those goods shall pass to the Client once delivery of the goods from the Supplier to the Client (or to any applicable third party) has taken place.

10. INTELLECTUAL PROPERTY

- 10.1 All work produced by the Supplier remains the Intellectual Property of the Supplier until payment in full for the Services is received in accordance with clause 7, following which, all rights in the Intellectual Property shall hereby automatically be assigned to the Client.
- 10.2 The Client grants to the Supplier a sublicenseable, royalty-free, worldwide a license to use its Intellectual Property as required for the commission and production of work in respect of Services for the Client.
- 10.3 Images procured by the Supplier for the Client for use in the Services are strictly subject to any applicable third party licensing terms. Images the Client requests the Supplier to purchase for the Services are licensed for use in relation to those Services only and not for any other purpose. The Client must inform the Supplier if it requires such images for any purpose other than for use as part of the Services, and the Client shall pay any applicable additional licensing fee.
- 10.4 The Client and its agents or other authorised users may not use or reproduce any of the Supplier's Intellectual Property including but not limited to any trademarks or logos, registered or unregistered, without written permission from the Supplier.
- 10.5 Any materials supplied by the Client and the Intellectual Property Rights therein shall remain the property of the Client. The Client warrants that it has obtained for itself and for the Supplier (and its subsidiaries, sub-contractors and third parties) all necessary consents, approvals and licences for use of the same in the execution of the Services.
- 10.6 The Client shall indemnify the Supplier in full for any losses, damages, liability, costs (including legal fees) and expenses arising from or in connection with its breach of any third-party license agreements,

infringement of intellectual property rights or for any damage that the Supplier suffers as a result of a breach of this clause of any nature whatsoever.

11. ANTI-BRIBERY & MODERN SLAVERY

- For the purposes of this clause 11, "Anti-Bribery and Modern Slavery Laws" shall mean the Bribery Act 2010 and the Modern Slavery Act 2015 and legislation or guidance published under them.
- 11.1 The Supplier and the Client shall, as applicable to the Services, comply with Anti-Bribery and Modern Slavery Laws and has in place procedures to prevent bribery and modern slavery in its supply chain. Both the Supplier and the Client shall make reasonable endeavours to ensure that any of its employees, agents and sub-contractors used to deliver to Services also comply with the Anti-Bribery and Modern Slavery Laws.

12. LIMITATION OF LIABILITY AND INDEMNITIES

- 12.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:
- 12.1.1 any breach of the Contract howsoever arising;
- 12.1.2 any use made by the Client of the Services or any part of them; and
- 12.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these conditions excludes the liability of the Supplier:
- 12.3.1 for death or personal injury caused by the Supplier's negligence; or
- 12.3.2 for fraud or fraudulent misrepresentation.
- 12.4 Subject to 12.1 and 12.2 the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
- 12.4.1 loss of profits; loss of business; depletion of goodwill or similar losses; loss of use;
- 12.4.2 loss or corruption of data or information or inoperability of any part of the Services resulting from any third party software or services;
- 12.4.3 the costs of third party software or services, for any damages incurred as a result of delays caused by any third party and for any third party claims arising from the Client's use of the Services; or
- 12.4.4 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 12.5 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.
- 12.6 The Client agrees to indemnify and hold harmless and defend at its own expense the Supplier from and against any and all claims of infringements of copyrights, trade marks or other intellectual property rights affecting the results of this Contract and to indemnify the Supplier in respect of all other matters for which indemnification is agreed in this Contract.
- 12.7 The Supplier undertakes that the Client will be given notice of any claim described in 11.1 above that is made against the Supplier and the Client will have the right to defend any such claims and make settlements thereof at its own discretion and at its own expense in order to settle or oppose any such claims.

13. CONFIDENTIAL INFORMATION AND SECURITY

- 13.1 All information, drawings, specifications, documents, contracts, design materials and all other data which the parties may have imparted to each other and may from time to time impart to each other relating to their business, clients, prices, services, requirements, contracts (including this Contract), including any technical specifications, is proprietary and confidential.
- 13.2 The Supplier hereby agrees that it will use such confidential information and all other data solely for the purposes of this Contract and that it will not, at any time during or any time after the completion, expiry or termination of this Contract use or disclose the same whether directly or indirectly, to any third party without the Client's prior written consent.

14. PROCESSING OF PERSONAL DATA

- In this clause 14, "Data Protection Laws" shall be the UK General Data Protection Regulation, the Data Protection Act 2018 or any other laws that apply to the processing of personal data in the course of the Services and any other laws which implement or supplement them and replace, extend, re-enact, consolidate or amend any of the foregoing. "Controller", "Processor" and "Personal Data" shall have the respective meanings given to them in Data Protection Laws from time to time.
- 14.1 The parties agree that the Client is a Controller and the Supplier is a Processor for the purposes of processing Personal Data pursuant to the Contract. The Client shall at all times comply with the Data Protection Laws in connection with the processing of Personal Data and the Supplier shall only process Personal Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.

15. TERMINATION

- 15.1 Notwithstanding any other provisions herein contained and without prejudice to any other rights such party serving notice may have, the Supplier may forthwith terminate this Contract by written notice to the Client if any of the following events occur:
- 15.1.1 if the Client commits any breach of the terms or conditions of this Contract including the terms, conditions and provisions of any quotation and fails to remedy such breach (unless it is a breach which entitles the Supplier to terminate this Contract immediately or insofar as such breach is not capable of remedy to furnish adequate compensation therefor) within thirty (30) days after receiving written notice requiring it to do so;
- 15.1.2 if the Client becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has an administrator or manager appointed of the whole or substantially the whole of its undertakings or if any distress or execution will be threatened or levied upon any equipment and/or software or other property of the party entitled to serve notice hereunder or if the other party is unable to pay its debts in accordance with the law relating to this Contract or there is a change in control (as defined in section 1124 of the Corporation Tax Act 2010) of the Client.
- 15.2 Termination of this Contract will be without prejudice to any accrued rights of either party and will not affect obligations which are expressed not to be affected by expiry or termination hereof.

16. FORCE MAJEURE

- The Supplier shall not in any circumstances have any liability under the Contract in any way whatsoever if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation for destruction, damage, delay or any other matters of that nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock-outs and industrial disputes (whether involving the workforce of the Supplier or any other party), fire, explosion, earthquake, acts of God, flood, drought, or bad weather, pandemic or compliance with any law or government order rule regulation or direction, breakdown of plant or machinery, malicious damage, failure of a utility service or transport network or default of suppliers or sub-contractors.

17. NOTICES

- Any notice required or permitted under the terms of this Contract or required by statute, law or regulation will (unless otherwise provided) be by email, or in writing and delivered in person, by first class post or registered mail (properly posted and fully prepaid in an envelope properly addressed) to the respective parties at their registered offices or such addresses as may have been notified to the other party for that purpose.

18. WAIVER

- Failure or neglect by the Client to enforce at any time any of the provisions hereof will not be construed nor will be deemed to be a waiver of the Client's rights hereunder nor in any way affect the validity of the whole or any part of this Contract nor prejudice the Client's rights to take subsequent action.

19. SEVERABILITY

- In the event that any of these terms, conditions or provisions or those in any quotation is determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law and with whatever modification is necessary to give effect to the commercial intention of the parties.

20. LAW

- This Contract shall be governed by the law of England and Wales and the Client agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.

21. ASSIGNMENT

- 21.1 The Client shall not without the prior written consent of the Supplier assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 21.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

22. NO PARTNERSHIP OF AGENCY

- Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

23. THIRD PARTY RIGHTS

- The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.