

## 1. Acceptance of conditions

The following conditions shall apply to all our projects/commissions to the extent that they are varied in writing in the express terms of the engagement. No alterations, variations, amendment of or additions to these conditions shall be valid unless made in writing and signed by our authorised representative.

## 2. Definition

The services which are to be provided by us pursuant to the contract with the client are hereinafter referred to as the project.

## 3. Acceptance of instructions

We shall be entitled but not bound to accept oral or written instruction from the client or any person who appears to be acting on behalf of the client. We may require written confirmation of oral instruction.

## 4 Security for fees and expenses

We may at any time require the client to provide a payment on account in respect of fees and expenses likely to be incurred in relation to any work commissioned by the client.

## 5 Fees, overheads and expenses

The client agrees to pay all fees, overhead and expenses charged by us on the following basis:-

**(A)** the quotations fees shown on each estimate cover all the time and activities concerning the assignment described within the estimate, through to presentation. The quotation figures are firm for three months from the date of the date of the estimate. Estimates are constructed on a stage basis.

**(B)** since our fees are based on design hours spent, which are difficult to estimate prior to the initiation of design development, it is sometimes necessary for us to split our fees in a range. We will make every effort to complete the project ; ; at, or near, the lower figure in the range, but in no case will the fee exceed the higher amount unless there is a change in the brief from the client.

**(C)** we will in addition charge to the client at cost all materials and services supplied to us in relation to the project. These may include (without limitation) the cost to us of artwork, photography, typesetting, colour separations, printing, travel, model making, illustration, vac-forming, computer aided design and fees of outside consultants. We may also charge the client for attending meetings.

**(D)** we shall make an overhead recovery charge equivalent to 20% of all expenses charged to the client under paragraph (c) above.

## **6 Payment**

**(A)** invoices will normally be rendered by us on a stage or weekly basis for work performed during that stage as the case may be.

**(B)** all invoices rendered shall be paid by the client in full within 30 days of the date of invoices.

**(C)** without prejudice to any other remedy we may have we may charge to the client interest at the rate of 10% per month or part thereof on the amount of any invoice which is not paid by the client by the due date. We shall be entitled (but not bound) to vary the rate of interest from time to time having any regard to any fluctuation in the lending rates of united kingdom banks.

## **7 Ownership of materials**

Any materials supplied to us by or on behalf of the client shall at all times including when in our possession or under our control or under the possession or under the control of any person to whom such materials are delivered by us be at risk of the client. We shall not be required to recover materials from any third party. We shall be entitled to destroy any such materials upon the earlier of two years after they come into our possession or the expiry of two years after they come into our possession or the expiry of one months notice to the client given at any time.

## **8 Copyright**

We shall at the clients request in writing assign to the client such copyright or such other rights as we may own in the design work carried out by us in respect of the project subject to receiving from the client all amounts owing to us by the client and all costs fees and expenses in relation to such assignment and subject to the due fulfilment by the client of all obligations owned by it to us. If the project is cancelled for whatever cause prior to its completion the client shall not be

entitled to use or otherwise exploit the ideas or other information made known to it in relation to the project and the client agrees to hold the same confidential.

## **9 Confidentiality**

We agree to hold confidential any information passed to us by the client in respect of the project save insofar as the same is or falls into the public domain or is not or becomes known to us otherwise than through the client.

## **10 Execution of designs**

We shall if reasonably requested assist the client in relation to selection of manufacturers and other contractors for the execution of the designs prepared by us but the client acknowledges that all decisions and contractual arrangements concerning such matters are the sole responsibility of the clients and shall be under no liability to the client in that respect.

## **11 Warranties and indemnities the client undertakes to us:**

**(A)** that no materials or information supplied by the client will if published by us or at our request be defamatory or in breach of any intellectual property or other right of Any third party; and

**(B)** to indemnify us against all liabilities, costs and expenses which we may incur as result of any breach of this provision.

## **12 Delay**

Any times or dates specified for the completion of any stage of the project or any part thereof are approximate only and are intended merely as an estimate. We shall not be responsible for nay loss or damage whatsoever caused for any reasons outside our direct control by any services not being completed or any goods not being available within any specified period (whether or not due to any negligence of ourselves, our agents employees or subcontractors). In the event of stoppage delay or interruption of work in our establishment or that of any supplier, sub-contractor or agent of ours for reasons outside our or its control or in the event of shortages or delays in the supply of or defects in materials or in the event of any other cause outside the control of ours or any such suppliers sub contractors or agent preventing or hindering performance of the contract with the client we shall be entitled to postpone the dates for completion of the project and/or

any stage of the project for such period as may be reasonable and/or (whether or not we have postponed such dates) terminate the contract by written notice to the client to that effect at any time without any liability on our part.

### **13 Liability**

**(A)** except where we are shown to have failed to use reasonable care we shall not be responsible for any loss damage whatsoever arising wholly or partly from or in respect of any services carried out by us from any non-performance thereof (whether or not such loss or damage may arise by virtue of any negligence of our agents employees or sub-contractors).

**(B)** in no event shall our liability in respect of any claim for any loss or damage of for work done loss of profit or consequential loss or damage howsoever arising in connection with the services to be rendered and/or goods to be supplied hereunder (including without limiting the generality of the foregoing any failure to perform adequately or at all such services and/or any defect in such goods) and whether or not as a result of any negligence of ours or of our agents sub-contractors or employees exceed the amount of the fee received by us in respect of the project concerned and the client agrees that all such losses or damages exceeding such amount shall be borne by the client who will indemnify us in respect thereof.

### **14 Third party rights**

**(A)** in carrying out services for the client we shall not act in a way which we know constitutes an infringement of rights of any third party. However, without prejudice to the generality of the foregoing, the services comprised in the project shall not oblige us to make any investigation in respect of and we shall not be treated as being in any way in breach of any obligation to the clients nor shall we be responsible for any loss or damage whatsoever arising in respect of any infringement of patents, service marks, unregistered designs, copyrights or any other such similar rights by whatever name called or the provisions of any act of parliament or treaty or any orders statutory instruments regulation or bye-laws made under or pursuant to any such act or treaty or of the requirements of any government department local authority or public authority. It shall be the responsibility of clients to take such steps as it may consider appropriate to investigate whether any work prepared, created or designed by us or our agents may infringe any rights of third parties and/or the provisions of any act of parliament or treaty or any orders statutory instruments regulations or bye-laws made under or pursuant to any such act or treaty. We shall co-operate with the client in regard to any investigation into any of the above matters which

the client may wish to carry out, but we reserve the rights in such case to charge a further fee according to the work undertaken.

**(B)** without limiting the generality of any of the forgoing provisions where at the clients request we incorporate into the project any name, logo, emblem or other written or pictorial matter we do so on the clear understanding that the client accepts the risk that the rights of third parties may be infringed thereby subsequent publication or use thereof and the client agrees fully and effectually to indemnify us and keep us indemnified against any liability claims costs losses damages expenses or other sums suffered incurred or paid by us arising out of such infringement.

## **15 Errors**

We shall be entitled to submit artwork and proofs of our work to the client and if we do so shall not be responsible for any errors which are not corrected by the client.

## **16 Force majeure**

If we shall be prevented from performing any obligation to the client or from compiling with instructions of the client by circumstances outside our control we shall at our option either be entitled to comply with those obligations or instructions as and when we are reasonably able to do so or to treat ourselves as wholly or partly released from all obligations so prevented and will not be under liability to the client for any failure to perform those obligations and instructions.

## **17 Rights on breach of contract by client**

**(A)** if the client is at any time in breach of any obligation owed to us we may if we think fit terminate upon immediate notice to the client all obligations to the client and may cancel any commitments made on behalf of the client. In event of any such cancellation the client will become liable to pay to us on demand such sums as we may specify relating to instructions given by the client before termination so as to indemnify us in relation to liabilities incurred and remunerated us as if all instructions given by the client had been performed in full.

**(B)** if the client is in breach of these terms in any way and we at our sole discretion take proceedings or stop with a view to taking legal proceedings or use any other method to recover any sums due from the client and disbursement which we may incur whether before or after proceedings are commenced and whether or not such proceedings are commenced. Except for costs incurred after commencement of proceedings, the client will pay legal cost in England on a solicitor and

own client basis.

## **18 No right of set-off**

The client shall not be entitled to the benefit of any set-off to which it might otherwise be entitled in law or in equity. All sums hereunder shall be payable without any deduction and shall be entitled in the event of non-payment to obtain and enforce judgment thereon without any stay of execution pending the determination of any cross-claim by the client.

## **19 Right to sub contract**

We may sub contract all or any part of our obligations to the client.

## **20 Cancellation by us**

We shall be entitled to cancel the contracts by written notice and without prejudice to any other rights which we may have if:

**20.1** The client shall go into liquidation;

**20.2** The client shall have an administration order made against it;

**20.3** A distress or execution is levied or enforced upon any property of client and is not paid out or discharged within 14 days

**20.4** An encumbrance takes possession or a receiver is appointed of the undertaking of the client or any of its property; or

**20.5** The client stops payment or ceases or threatens to cease to carry on its business or to pay its debts as when they fall due.

Such cancellation shall be on the terms referred in clause 17(a)

## **21 Cancellation by client**

If at any time during the course of the project, for any reason the client decides to terminate or suspend the project, then it will be billed only for the time spent and expenses incurred to that

date.

## **22 Non-exclusivity**

Unless expressly agreed in writing and supported by a retainer fee, we do not work on an exclusive basis for clients.

## **23 Credit**

The client agrees to give us credit for design work conducted by us in all initial press releases concerning the new design work.

## **24 Notices**

**(A)** any written notice or other communication to be in writing under these terms may be sent by recorded delivery or by fax in the case of a notice by us may be addressed to the client at its last known or usual address and in the case of a notice by the client may be addressed to us at our usual address.

**(B)** any such notice shall be deemed to have been duly served in the ordinary course of post and in proving service it shall be sufficient to prove that the envelope containing the notice was properly addressed, prepaid and posted.

## **25 Headings**

The headings to the paragraph of these conditions are inserted for convenience of reference only and shall not affect their interpretation.

## **26 Law and jurisdiction**

The continuation, validity and performance of all our contracts shall be governed by English law and the clients submits to the non-exclusive jurisdiction of the English courts.