

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES
[EARL & THOMPSON MARKETING LIMITED]

1. INTERPRETATION

The definitions and rules of interpretation in this condition apply in these terms and conditions (Conditions).

Contract: the Customer's instruction to proceed with work (whether oral or in writing) and the Company's acceptance of such instruction, or the Customer's acceptance of an estimate for Services by the Company under condition 2.2.

Customer: the person, firm or company who purchases Services from the Company.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Deliverables: all Documents, products and materials developed by the Company in relation to the Services in any form, including computer programs, websites, data, reports and specifications (including drafts)

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Input Material: all Documents, information and materials provided by the Customer relating to the Services including (without limitation), computer programs, data, reports and specifications.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, 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.

Pre-existing Materials: all Documents, information and materials provided by the Company relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

Services: the services to be provided by the Company under the Contract as set out in the Contract together with any other services which the Company provides, or agrees to provide, to the Customer.

Company: Earl & Thompson Marketing Limited

Company's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

- (a) apply to and be incorporated into the Contract; and
- (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's instruction to proceed with work (whether oral or in writing) or the Customer's acceptance of an estimate for Services by the Company, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Company other than:

- (a) by a written acknowledgement issued and executed by the Company; or
- (b) (if earlier) by the Company starting to provide the Services, when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Estimates are given by the Company on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any estimate is valid for a period of 28 days from its date, provided that the Company has not previously withdrawn it.

3. COMMENCEMENT

The Services supplied under the Contract shall be provided by the Company to the Customer from the date of acceptance by the Company of the Customer's offer in accordance with condition 2.2

4. SUPPLIERS OBLIGATIONS

4.1 The Company shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer

4.2 The Company shall use reasonable endeavours to meet any performance dates but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) co-operate with the Company in all matters relating to the Services;
- (b) provide to the Company, in a timely manner, such Input Material and other information as the Company may reasonably require and ensure that it is accurate in all material respects;

5.2 If the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the last date of supply of the Services OR termination of the Contract, solicit or entice away from the Company or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

6. CHARGES AND PAYMENT

6.1 In consideration of the provision of the Services by the Company, the Customer shall pay the charges as set out in the Contract which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Condition 6.2 shall apply if the Company provides Services on a time and materials basis. Condition 6.3 shall apply if the Company provides Services for a fixed price. The remainder of this condition 6 shall apply in either case.

6.2 Where Services are provided on a time and materials basis: (a) the charges payable for the Services shall be calculated in accordance with the Company's standard fee rates applying from time to time.

- (b) all charges quoted to the Customer shall be exclusive of VAT, which the Company shall add to its invoices at the appropriate rate;
- (c) the Company shall at its discretion be entitled to invoice the Customer on an interim basis for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6.2.

6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the Contract. The total price shall be paid to the Company (without deduction or set-off) in instalments, as set out in the Contract. At the end of a period specified in the Contract, the Company shall invoice the Customer for the charges that are then payable, together with expenses, the costs of materials and VAT, where appropriate, calculated as provided in condition 6.4.

6.4 Any fixed price and daily rate contained in the Contract excludes:

- (a) the cost of hotel, subsistence, travelling and any other

- ancillary expenses reasonably incurred by the individuals whom the Company engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Company for the supply of the Services, and the Company's mark up thereon. and
- (b) VAT, which the Company shall add to its invoices at the appropriate rate.
- 6.5 In respect of media charges:
- (a) The Company will place all agreed advertising in the scheduled media.
- (b) The Company shall retain all commissions allowed by the media; where these are less than 15% the Company will subtract the commissions allowed, from the rate card costs, and then uplift the net price by 17.75% which allows the Company a return of 15% from the gross expenditure (20% on export advertising) including ASBOF.
- (c) The Customer shall fully and effectively indemnify the Company in respect of any charges raised by the media arising in respect of cancellation or delay arising as a result of change or delay in instructions by the Customer.
- 6.6 The parties agree that the Company may by notice to the Customer review and increase the charges set out in the Contract including its standard fee rate. The Company will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it may, within two weeks of such notice being received or deemed to have been received in accordance with condition 24, terminate the Contract by giving one month's written notice to the Company.
- 6.7 (a) The Customer shall pay each invoice submitted to it by the Company, in full and in cleared funds, within 30 days of date of invoice to a bank account nominated in writing by the Company
- (b) If the Customer disputes the invoice this must be notified to the Company within 14 days of receipt.
- 6.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may:
- (a) charge interest on such sum from the due date for payment at the annual rate of [2]% above the base lending rate from time to time of [Barclays Bank Plc], accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Company may claim compensation and interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services until payment has been made in full.
- 6.9 Time for payment shall be of the essence of the Contract.
- 6.10 All sums payable to the Company under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.10 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.11 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.
- 6.12 The Deliverables and any other goods delivered by the Company to the Customer shall be at the risk of the Customer from the time of delivery, but the Deliverables and any other goods shall remain the sole and absolute property of the Company until such time as all money due to the Company has been paid.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 As between the Customer and the Company, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Company. Subject to condition 7.2, the Company licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Company terminates the Contract OR the Contract terminates, this licence shall automatically terminate.
- 7.2 The Customer acknowledges that, where the Company does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Company obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Company to license such rights to the Customer.
- 7.3 The Customer shall fully and effectively indemnify the Company against all and any claims costs and expenses arising out of any use by the Customer of Pre-existing Materials which is in breach of the terms of any such licence or sub-licence.
- 8. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Customer may obtain.
- 8.2 The Customer may disclose such information:
- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
- (b) as may be required by law, court order or any governmental or regulatory authority.
- 8.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 8.
- 8.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Customer (including Pre-existing Materials and the Company's Equipment) shall, at all times, be and remain as between the Company and the Customer the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.
- 9. LIMITATION OF LIABILITY**
- 9.1 This condition 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3 Nothing in these Conditions limits or excludes the liability of the Company:
- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Company; or
- 9.4 Subject to condition 9.2 and condition 9.3
- (a) the Company shall not be liable for:
- (i) loss of profits; or
- (ii) loss of business; or
- (iii) depletion of goodwill and/or similar losses; or
- (iv) loss of anticipated savings; or
- (v) loss of goods; or
- (vi) loss of contract; or
- (vii) loss of use; or
- (viii) loss of corruption of data or information; or
- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, 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.
- 10. DATA PROTECTION**
- The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Company in connection with the Services.
- 11. DESIGNS AND OTHER PRELIMINARY WORK**
- All preliminary and additional work carried out at the Customer's request whether of a design or experimental nature or otherwise and not specifically included in any estimate will be charged to the Customer.
- 12. PROOFS**
- Authors' corrections on and after first proof including alterations in style will be charged extra. Proofs of all work may be submitted for Customer's approval and no responsibility will be accepted by the Company for any errors in proofs passed by him or her. Unless specifically stated in the Company's estimate, machine proofs or proofs in colour will be charged at an additional rate.
- 13. VARIATION IN QUANTITY:**
- Every endeavour will be made to deliver the correct quantity ordered but estimates are conditional upon a margin of 5% (for colour work 10% being allowed for and the same to be charged for or deducted).

- 14. ARTWORK & DATA:**
 (a) All artwork, illustrations, photographic originals, computer disks, digital information, lithographic plates and films will unless otherwise agreed in writing remain the property of the Company.
 (b) All reproductive origination work detailed above may be effaced or destroyed immediately after any order is executed unless written arrangements are made to the contrary in which event a reasonable holding charge may be made by the Company.
- 15. ILLEGAL MATTER:**
 (a) The Company shall not be required to print publish or host any material which in its opinion is or may be of an illegal or libelous nature.
 (b) The Customer shall not upload any material to a website hosted by the Company which is illegal, libelous, or which amounts to infringement of the rights of any other person in respect of copyright patent design or trademark
 (b) The Company shall have the right to a full indemnity by the Customer in respect of all and any claims costs and expenses arising out of such illegal and libelous matter or any infringement of copyright patent design or trademark printed for the Customer.
- 16. CLAIMS**
 (a) Claims for damage or partial loss of goods in transit must be made in writing to the Company and the carrier so as to reach each of them within 7 days of delivery and claims for non-delivery within 10 days of receipt of notification (whether or not in writing) of despatch of goods by the Company. All other claims must be made to the Company within 14 days of delivery.
 (b) No claim may be made against the Company in respect of any goods after such goods have been cut, printed or processed by the Customer.
- 17. FORCE MAJEURE**
 The Company shall have no liability to the Customer under the Contract 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) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 18. VARIATION**
 18.1 The Company may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
 18.2 Subject to condition 18.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 19. WAIVER**
 19.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
 19.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 20. SEVERANCE**
 20.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 20.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable
- 21. ENTIRE AGREEMENT**
 21.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
 21.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract) as provided in the Contract].
 21.3 Nothing in this condition shall limit or exclude any liability for fraud.
- 22. ASSIGNMENT**
 22.1 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 22.2 The Company may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
 22.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.
- 23. NO PARTNERSHIP OR AGENCY**
 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties. Nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 24. NOTICES**
 24.1 Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the Contract, or as otherwise specified by the relevant party by notice in writing to the other party.
 24.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the Contract or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the couriers delivery receipt is signed.
 24.3 This condition 24 shall not apply to the service of any in any proceedings or other documents in any legal action.
 24.4 A notice or other communication required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.
- 25. GOVERNING LAW AND JURISDICTION**
 25.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
 25.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter.

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