

TERMS AND CONDITIONS OF SALE

1. **GENERAL**

These are the main terms of business of the Agency ("the Terms"). In these Terms of Business:
"the Agency" shall mean Proteus Creative Communications Limited and any successors or assigns
"Authorised Representatives" means in the case of the Agency, any director, and in the case of the Client, any director, partner or sole proprietor
"the Client" shall mean any individual, firm, company or other party with whom the Agency contracts or seeks to contract
"the Contract" means any agreement for the provision of Services and/or Materials by the Agency to the Client
"Estimate" means any estimate or revised estimate sent to the Client by the Agency on the Agency's headed notepaper detailing, inter alia, the description and price of the Materials and/or the Services
"the Services" means any contracts for the provision of design consultancy services to the Client of whatsoever nature, including the Materials
"the Sub-Contractors" shall mean exhibition display organisers and bureaux engaged by the Agency
"Materials" shall mean design visuals, disk located digital reproduction/artwork, films, painting material, display material and all matter analogous to the above.
2. **COSTS**
- 2.1 The Client has 21 days within which to accept the first Estimate of the Agency to provide the Services in accordance with these Terms. Any subsequent Estimate will be effective and binding upon the Client when sent by the Agency either by fax or by post in accordance with clause 23 hereof, and for the avoidance of doubt, the current costs for any Contract shall be the costs indicated on the latest Estimate (by date).
- 2.2 If the Client accepts the Estimate, the Client shall pay the Agency for the Services and the Materials such sums at such times as specified in the Estimate, which shall include any revised charges for changes to the Contract.
- 2.3 Estimates are based on the client's current costs of production and, unless otherwise agreed, the Agency reserves the right to amend on or at any time after acceptance of an Estimate on giving notice to meet any rise or fall in such costs which is due to any factor beyond the Agency's control.
- 2.4 Where a Sub-Contractor is employed by the Agency, the Agency shall get an estimate from the Sub-Contractor and seek the client's approval to the Sub-Contractor's fees.
- 2.5 The Client may not cancel, rescind or repudiate any Contract which has been accepted by the Agency except with the prior written agreement of the Agency and on terms that the Client shall indemnify the Agency in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages, charges and expenses reasonably incurred by the Agency as a result of cancellation, rescission or repudiation for all work up to and including the date of cancellation, rescission or repudiation.
- 2.6 Time for payment for the Services and/or the Materials shall be of the essence.
- 2.7 The Client shall be deemed to have authorised the Agency to purchase all Materials once any Estimate is accepted.
- 2.8 Except as otherwise agreed between the parties, the Materials and/or Services are accepted by the Client on the basis that the price quoted is ex works and is exclusive of any value added tax, special packing materials, carriers charges, delivery, insurance or customs duties, which costs shall be borne directly by the Client.
3. **TAX**

The Agency reserves the right to charge the amount of any Value Added Tax payable whether or not included on the estimate or invoice.
4. **COPYRIGHT**

Where advertising, photography, artwork or design has been commissioned, the parties agree that copyright for all work carried out is retained by the Agency. Where any such material has been supplied to the Client for its use the parties agree it shall only be used directly for the purposes authorised by the Agency. Once the Agency has received payment in cleared funds, the reproduction and publication rights shall transfer to the Client, but until such time shall remain vested in the Agency and the Client shall hold such material as bailee until the Agency has been paid in full.
5. **CLIENT'S PROPERTY**

Except in the case of a Client who is not contracting in the course of a business or holding himself out as doing so Client's property and all property supplied to the Agency by or on behalf of the Client shall while it is in the possession of the Agency or in transit to or from the Client be deemed to be at the Client's risk unless otherwise agreed and the Client should insure its property accordingly.
- 5.2 The Agency shall be entitled to make a reasonable charge for the storage of any Client's property left with the Agency before receipt of the order or after notification to the Client of completion of the work.
6. **VARIATIONS**

Variations to these Terms shall only be permissible if agreed in writing by Authorised Representatives of the parties.
7. **ILLEGAL MATTER**
- 7.1 The Agency shall be under no obligation to print 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 or any third party.
- 7.2 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 of any other proprietary or personal rights contained in any material printed for the Client. The indemnity shall extend to any amounts paid in respect of legal costs in settlement of any claim.
8. **LIABILITY**
- 8.1 Apart from damages claimed from death or personal injury, only direct other losses directly arising from the Agency's work or the Agency's failure to act in accordance with the Contract shall be the Agency's responsibility and all other claims are expressly excluded.
- 8.2 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 clear days of delivery (or, in the case of non-delivery, within 42 days of despatch). All other 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 (i) it was not possible to comply with the requirements and (ii) the claim was made as soon as reasonably possible.
9. **CLIENT'S OBLIGATIONS**

The Client undertakes to do the following:
- 9.1 Give clear and precise instructions and in respect of matters important to Client, these must be confirmed in writing.
- 9.2 To pay in full, within 30 days of invoice date, each and every invoice or as otherwise detailed in any Estimate that the Client has accepted; in default, the Agency reserves the right to charge interest from the invoice date at the rate of four per cent over the base rate from time to time of Barclays Bank Plc both before and after judgment.
- 9.3 The Client is to adhere to any agreed interim or stage payment billing and payment agreement as agreed between the parties from time to time.
10. **PROOFS**
- 10.1 Proofs of all work may be submitted for Client's approval and the Agency shall incur no liability for any errors not corrected by the Client in proofs so submitted. Client's alterations and additional proofs necessitated thereby shall be charged at an extra cost, except in cases where the Client's alterations are necessary as a result of the Agency's failure to follow the Client's instructions.
- 10.2 When style, type or layout is left to the Agency's judgement, any changes made by the Client shall be charged as extra items and shall be invoiced to the Client at the Agency's then current hourly rate.
- 10.3 If the Client fails to notify the Agency of any amendments within 14 days of receiving a proof, the Client shall be deemed to have checked and accepted the proof and the Agency shall have no liability in respect of claims, charges or variations subsequently necessitated.
11. **STANDARD TERMS**

The Agency will use reasonable endeavours to comply with the Printing Industry's Best Practice documents and Codes of Practice provided from time to time and in the event of a conflict between those and these Terms, then these Terms shall prevail.
12. **DELIVERY AND PAYMENT**
- 12.1 Delivery of work shall be accepted when tendered.
- 12.2 Unless otherwise specified the price quoted is for delivery of the work to the Client's address as set out in the Estimate. A charge to the Client may be made to cover any extra costs involved for delivery to a different address.
- 12.3 Should expedited delivery be agreed an extra charge may be made to the Client to cover any overtime or any other additional costs involved.
- 12.4 Should work be suspended at the request of or delayed through any default of the Client for a period of 30 days the Agency shall immediately upon the expiry of the 30 day period be entitled to payment for work already carried out, Materials specially ordered and other additional costs including storage.
- 12.5 The Client will either pay each invoice in full in cash or cleared funds within thirty days from the date of such invoice or on terms detailed in any relevant Estimate that the Client has accepted, failing which the Agency shall be entitled to cease all further work on behalf of the Client without liability in respect of any loss or damage sustained by the Client as a result.
- 12.6 Notwithstanding the Agency's ability to cease any further work in accordance with clause 12.5 of these Terms, the Client shall not in any respect be released from its obligations to the Agency under any Contract.
13. **ESTIMATES**

All prices quoted are dependant upon sight of relevant copy, film and artwork or other such materials.
14. **TIMETABLE**

If a timetable is agreed between the parties, the Agency will only be expected to comply with the deadlines if the Client does likewise and in as much as the Client has not delayed or altered the brief in any way.
15. **RISK**

Risk in the Materials shall pass to the Client on delivery.
16. **PROPERTY**
- 16.1 Notwithstanding delivery of the Services and/ or Materials (or of any documents representing the Services and/ or Materials) the property in the Services and/ or Materials shall remain with the Agency until the Client has paid the Agency in full in cash or cleared funds and the Client shall hold such Services and/ or Materials in a fiduciary capacity as the Agency's bailee until such payment has been made in accordance with clause 12 above.
- 16.2 Until property in the Services and/ or Materials has passed to the Client in accordance with clause 16.1 above and without prejudice to the Agency's other rights:
- 16.2.1 The Client shall (unless otherwise agreed by the Agency in writing) take all reasonable steps to ensure that all Services and/ or Materials which are in the possession or control of the Client or the Client's agents or customer are kept fully insured and labelled or otherwise marked and kept apart from all other goods so that they may be readily identified and separated from other goods of the Client and third parties.
- 16.2.2 Until property in the Goods has passed to the Client in accordance with clause 16.1 above, the Agency shall have the right to require the Client to deliver up the Services and/ or Materials and if the Client fails to do so to re-possess the Services and/ or Materials and for that purpose to go upon any premises of the Client or any third party where the Services and/ or Materials are stored.
- 16.2.3 Until property in the Services and/ or Materials has passed to the Client in accordance with clause 16.1 above, the Agency may maintain an action for the price of the Services and/ or Materials.
17. **VARIATIONS IN QUANTITY**

Every endeavour will be made to deliver the correct quantity ordered, but Estimates are conditional upon margins of 5 per cent for work in one colour only and 10 per cent for other work being allowed for overs or shortage (4 per cent and 8 per cent respectively for quantities exceeding 50,000) the same to be charged or deducted.
18. **DELAY**
- 18.1 The Agency will use reasonable endeavours to comply with any date or dates for the supply of the Services and/or the Materials, save that unless the Contract otherwise expressly provides, such date or dates shall constitute only statements of expectation and shall not be binding. Accordingly, unless the Contract expressly provides otherwise, the time of the supply of the Services or the Materials shall not be of the essence of the Contract and if the Agency fails to supply the Services or the Materials by any specified date, such failure shall not constitute a breach of the Contract and the Client shall not be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.
- 18.2 If the Agency shall be prevented or hindered from supplying the Services and/or the Materials or any part thereof by any circumstances beyond its reasonable control (Force Majeure) for any Materials and/or Services deliverable (within the United Kingdom, by close of business on the fiftieth day from the date of acceptance of the Contract and for any Materials and/or Services deliverable outside the United Kingdom, by close of business on the one hundredth day from the date of acceptance of the Contract, or, in either case, if the Contract expressly provides that the date for the supply of the Services and/ or the Materials is binding, by the date specified), performance of the Contract shall be suspended for so long as the Agency is so prevented or hindered PROVIDED THAT if the performance of the Contract shall be suspended for more than one hundred and fifty days (or if the Contract expressly provides that the date for the supply of the Services and/ or the Materials is binding, until the date specified) the Agency shall be entitled by notice in writing to the Client, or the Clients shall be entitled by notice in writing to the Agency, forthwith to terminate the Contract or cancel any outstanding part thereof and in such circumstances the Client shall pay at the rates specified above for all the Services and/or the Materials supplied and materials used by the Agency to the actual date of such termination and the Agency shall not have any liability to the Client for any direct or consequential loss or damage suffered by the Client as a result of the Agency's inability to perform its obligations under the Contract in the circumstances mentioned above.
- 18.3 For the purposes of clause 18.2, Force Majeure shall mean fires, strikes, insurrection or riots, embargoes, or delays in transportation, inability to obtain supplies and raw materials or any other circumstances of any kind whatsoever beyond the reasonable control of the Agency which results in that party being in breach of its obligations under this Agreement.
- 18.4 The Agency shall not be liable for any claim or claims for indirect consequential or incidental injury, loss or damage (other than for death or personal injury as a result of the Agency's negligence) made by the Client against the Agency (whether in contract or in tort including negligence on the part of the Agency, its servants or agents) arising out of or in connection with the Services or the Materials or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or a breach of a fundamental term thereof) of the Agency its servants or agents in the performance of the Contract.
- 18.5 Without prejudice to the generality of the foregoing nothing herein contained shall operate to exclude or restrict liability for breach of any obligation arising from the Supply of Goods and Services Act 1982 as against the Client if he is dealing as a consumer as defined by Section 12 of the Unfair Contract Terms Act 1977.
- 18.6 The Agency makes no representations as to the benefit to the Customer arising out of the provision of the Services and there is neither expressed nor shall there be implied into the Contract any conditions or warranties as to the same.
19. **LIEN**

Without prejudice to any other remedies which the Agency may have, the Agency shall in respect of all debts due and payable by the Client to the Agency have a general lien on all goods and property belonging to the Client in its possession and shall be entitled upon the expiration of fourteen days' notice to the Client to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof to the payment of such debts.
20. **NON-ASSIGNMENT**

The Client may only assign any claims and obligations under these terms of business to third parties after having obtained the prior written approval of the Agency, such approval not to be unreasonably withheld.
21. **WAIVER**

Any waiver of any breach of these Terms shall not prejudice the Agency's rights in respect of any subsequent breach.
22. **DISPUTE RESOLUTION**

All disputes, differences or questions arising out of these terms of business or as to the rights and liabilities of the parties hereto or as to the construction or interpretation hereof shall be referred to the decision of a single arbitrator to be agreed between the parties or in default of agreement to be appointed at the request of either party by the President for the time being of the Chartered Institute of Arbitrators. The arbitrator shall act as an expert whose decision (including as to costs) shall, except in the case of manifest error, be final and binding on the parties.
23. **NOTICES**

Any notices required to be given to the Client or to the Agency must be given in writing and delivered by hand, by mail, by telex, by facsimile with mail confirmation, at the addresses set out in the main contract (or such other addresses as shall have been notified to the other party in writing). If hand delivered, notices are deemed served upon the day following delivery. If sent by first class mail, notices are deemed served on the second day following posting. If sent by telex, notices are deemed served upon receipt of the sender's answerback. If sent by facsimile, notices are deemed served upon receipt of the sender's confirmation provided that such facsimile notice is followed by confirmation by first class mail.
24. **SEVERABILITY**

If any part of these terms of business shall be found by any court to be invalid, the invalidity should not affect the remaining conditions and the parties shall attempt to substitute therefore a valid condition having as near the same effect as the invalid condition as shall be legally permissible.
25. **ENTIRE AGREEMENT**
- 25.1 The Client agrees that he will have no remedy in respect of any untrue statement made to him upon which he relied in entering into these terms of business and that his only remedies will be for breach of contract. The Client irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation, not contained in these terms of business, or breach of any warranty not contained in this agreement (unless such misrepresentational warranty was made fraudulently) and/or to rescind these terms of business.
26. **INSOLVENCY**
- 26.1 If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding-up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, the Agency without prejudice to other remedies shall:
- 26.1.1 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, and
- 26.1.2 in respect of all unpaid debts due from the Client have a general lien on all goods and property in his 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 he thinks fit and to apply the proceeds towards such debts.
27. **LAW**

These conditions and all other express terms of the Contract shall be governed and construed in accordance with the Laws of England. These Terms do not affect your statutory rights.