



Terms and Conditions of Business

1. SCOPE OF CONTRACT

1.1. Terms and Conditions – These terms and conditions ('Conditions') set out the terms upon which The Adworks agrees to provide professional services pursuant to a contract ('Contract'). Any modification to these terms must be in writing signed by a Partner of The Adworks and cannot be inferred from a course of action. These Terms govern the Contract to the exclusion of any other terms subject to which any order or quotation is accepted or purported to be accepted or any order is made or purported to be made by the Buyer and these Terms shall be deemed to have been delivered first and last in time.

1.2. Services – The Adworks supplies its clients ('the Client') with design and consultancy services specified in a fee proposal ('Fee Proposal') relating to the Client's identity, business, literature, branding, strategic market positioning and the packaging, promotion and sale of goods and services ('Services') for a specific project ('Project').

1.3. The Contract will come into existence upon either:

- a. Acceptance – The acceptance by The Adworks of an order for Services from the Client; or
- b. Acknowledgement – The written acknowledgement by The Adworks of an authority to proceed given by the Client in accordance with a Fee Proposal (in both cases incorporating these Conditions). The Adworks reserves the right not to start work on a Project until it is in possession of a written authority to proceed from the Client.

1.4. Entire Agreement – The Contract, when formed, shall constitute the whole agreement between The Adworks and the Client and both parties confirm that they have not entered into contractual relations on the basis of any representations (to include statements about price, availability, delivery, design quality and specification) that are not expressly incorporated into the Contract provided however this is not

intended nor shall it exclude any liability of either party for fraudulent misrepresentation.

2. INSTRUCTIONS, INFORMATION AND SUPPORT

2.1. Client's Responsibility – It is an express condition of the Contract that the Client shall be solely responsible for providing The Adworks with all necessary instructions, information and support concerning the Services, the Project (to include the Client's goods, the market, any relevant legal or regulatory controls and generally) and the Client's requirements. The Client's knowledge and commercial information about such matters and its requirements are vital and The Adworks shall not be responsible for any shortcomings in such information.

2.2. Incomplete Instructions – The Client shall be liable for all costs and expenses incurred as a result of any failure by the Client to provide full or proper instructions .

2.3. Communications – The Adworks cannot guarantee that e-mails sent to it or its agents or representatives will be received and all critical communication should be sent or confirmed by personal delivery, or registered post. The Adworks is not obliged to verify any instructions.

2.4. Discretion – In the absence of precise instructions, and in the event of the Client or his representative being unavailable for clarification at the appropriate time, The Adworks reserves the right, without liability, to use its professional discretion in execution.

3. PROOFS

3.1. Approval – Proofs may be submitted, for the Client's approval, whether in artwork, printed, or electronic form, shall be dealt with promptly and The Adworks accepts no liability for errors not identified by the Client.

3.2. Preliminary Work – Charges may be made for all preliminary work executed, experimental or otherwise, at the Client's request.

4. QUALITY

4.1. Tolerances – Where the Service includes the supply of goods or materials, the Client accepts reasonable tolerances in respect of colour, quality and quantity. The Client acknowledges that a final printed product may differ in colour and quality from that shown on any proof. Where the Client requires the final colour and quality of a printed product to accord substantially with the proof, or exceed a commercially acceptable result where a proof has not been requested, then this must be stipulated as part of the initial brief so that the cost of procuring this can be incorporated into the Fee Proposal.

5. DELIVERY

5.1. Time – The specified delivery times of the Services stated by The Adworks are reasonable estimates. Time shall not be of the essence in any respect unless The Adworks has expressly agreed so in writing.

5.2. Client Response – The Client recognises that for The Adworks to be able to perform the Services in a timely fashion and to meet any agreed timetable then the Client must also respond to the enquiries from The Adworks relating to the Services or the Project in a timely fashion, to include the signing off and approval of materials submitted to it for such purpose and the giving of instructions in relation to the Project as requested. The Client acknowledges that should it fail in this regard The Adworks is unlikely to be able to perform the Services within an agreed time period.

5.3. Variations – The Client acknowledges that any agreement to perform additional work as part of a Project or any variation of the Services is likely to effect the ability of The Adworks to perform the Services within the specified time, and increase the costs of the Project.

6. CHARGES

6.1. Cost Variations – Quotations (whether or not forming part of a Fee Proposal) are based on information provided by the Client, and current costs of production and are subject to amendment after 30 days to meet any rise in such costs.

6.2. Rush Fees – Any part of the service that requires expedited delivery must be expressly agreed, and an additional charge may be made.

6.3. Sub-Contractors and Charges – Where The Adworks undertakes to arrange and appoint specialist facilities on behalf of the Client (photography, illustrations, printing, exhibition contracting and the like), quoted rates from those facilities are passed on to the Client in good faith. In the event of additional charges being made by such facilities or if any additional expenses arise which could not have reasonably been anticipated other than as a result of negligence by The Adworks, we reserve the right to invoice those additional charges to the Client.

6.4. Expenses – Unless agreed as part of the Services the Client will reimburse The Adworks costs for necessary travel, subsistence and other out of pocket expenses incurred by The Adworks during the provision of the Services.

6.5. Management Charge – The Adworks reserves the right to add a management charge to the cost of bought in or sub contracted Services in accordance with industry practice.

6.6. Modifications – The Adworks will charge at its current rate for additional work necessitated by reason of corrections or modifications or changes required to the Services or after work has been approved by the Client (to include any Client led changes to dates for delivery of the Services and/or alterations in style).

6.7. Postponements – Should production be postponed or suspended at the request of the Client, or delayed through his default, for a period of 30 days or more, The Adworks shall be entitled to payment for work already carried out and for materials specially ordered.

6.8. Delivery Costs – The Client will be charged for all delivery costs unless otherwise agreed.

7. PAYMENT TERMS

7.1. Payment Details – Accounts are payable to The Adworks, PO Box 2097, Walsall, WS3 3GS. Bank: HSBC. Sort code: 40-12-20. Account number: 61405209.

7.2. VAT – All prices quoted are exclusive of VAT, which shall be charged at the appropriate rate. VAT Registration No. 715 0438 60

7.3. Stage Payments – The Adworks will usually render an account prior to the commencement of each stage of work and reserves the right to render an interim account at any time.

7.4. Advance Payment – The Adworks reserves the right at its discretion to invoice a client in advance up to 50% of the total design fee and/or costs and will not be obliged to commence work on the Services or a Project until this has been settled.

7.5. Artwork – Where master artwork files are requested to be supplied to the Client, payment in full shall be made before such request is actioned.

7.6. Overdue Accounts – Amounts outstanding over 30 days from the date of invoice are subject to an interest charge of 2.5% per month from the date of invoice on the outstanding balance. The Adworks reserves the right to recover from the Client all costs incurred in the recovery of overdue accounts and to suspend all Services to a Client on all Projects whilst any invoice is outstanding.

7.7. Invoice Queries – Any queries as to the amount of the invoice should be raised, in writing, within seven days of receipt, otherwise the account invoiced will be deemed to be agreed. The Client is not entitled to withhold payment of, or make deductions from, invoices by reason of any claim or alleged claim and all rights of set off are excluded.

8. CANCELLATION/SUSPENSION

8.1. Client Cancellations/Suspension – A Client may by notice in writing cancel or suspend a Contract. The Adworks reserves the right to charge for all work carried out up to the time of any cancellation, and to charge for any materials or services specially delivered or ordered which cannot be cancelled.

8.2. The Adworks's Cancellation/Suspension – The Adworks has the right to terminate the Contract at any time if it believes its professional reputation or its standing is threatened by its continued involvement with the Project if the Client stops trading or commits an act of bankruptcy or if a Liquidator, Receiver

or Administrator is appointed or if the Client enters into an arrangement with its creditors or if The Adworks has reasonable grounds to believe that the Client may not discharge its fee obligation to The Adworks.

8.3. Suspension – Following notice of suspension The Adworks may at any time decline to undertake any further work on the Project and it shall be at its complete discretion as to whether to maintain any design team that was assembled for the Project.

8.4. Failure to provide required content – To remain efficient, The Adworks must ensure that work we have scheduled is carried out at the scheduled time. On occasions we may have to reject other work and enquiries to ensure that your work is completed by the time arranged. On any occasion where we cannot progress your project because you have not provided the required information and we are delayed as a result, The Adworks reserves the right to invoice in full for the project cost as at the originally agreed project completion date.

9. LIABILITY

9.1. Liability – The Adworks shall not accept liability for delay, loss or damage caused by carriers, as long as The Adworks can provide proof of despatch.

9.2. Claims – Claims arising from damage, delay or partial loss of goods (including designs) in transit must be made in writing to The Adworks within 3 days of delivery. Claims for non-delivery must be made within 28 days of despatch.

9.3. Limitation – The Adworks shall only be liable in tort or contract or general law up to the value of the defective work under the Contract in respect of the Project provided that nothing in these conditions shall limit the liability of The Adworks for death or personal injury arising as a result of its negligence or the negligence of its agents.

9.4. Force Majeure – The Adworks shall not be responsible for any failure caused by events beyond its reasonable control.

9.5. Client Stipulations – The Adworks shall not be responsible for any failure of any materials or items stipulated by the Client to be used in relation to the Project.

9.6. Third party rights – The Adworks shall be under no liability to the client for any actions, costs, claims or demands suffered in respect of any infringement or alleged infringement of third party rights save insofar as such infringement is due to the negligence or default of The Adworks.

9.7. Limitation of loss – Except in respect of death or personal injury caused by the negligence of The Adworks, The Adworks shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty, condition, or other term, of any duty at common law or under the expressed terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of The Adworks, its employees or agents or otherwise) which arise out of or in connection with the supply of the Services (including any delay in supplying or

any failure to supply the Services in accordance with the Contract or at all) or their use or resale by the Client and the entire liability of The Adworks under or in connection with the Contract shall not exceed the price of the Services, except as expressly provided in these Terms

9.8. Subcontract – The Adworks accepts responsibility for the work of its subcontractor unless they have been stipulated by the Client.

9.9. Orders communicated verbally – While every effort will be made to ensure accuracy, risk of error with orders rests entirely with the Client. Verbal orders should be confirmed immediately in writing.

9.10. A claim by the Client which is based on defective work or failure to correspond with any specification shall (whether or not delivery is refused by the Client) be notified to The Adworks within 7 days from the date of delivery (or where the defective or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the failure or defect. If delivery is not refused and the Client does not notify The Adworks accordingly the Client shall not be entitled to reject the work and The Adworks shall have no liability for such defect or failure and the Client shall be bound to pay the price as if the work had been delivered in accordance with the Contract.

10. DISPOSAL OF MATERIAL

10.1. Disposal – Artwork, digital files, printing plates, screens, blocks, negatives, positives, slides, sketches, magnetic disks and tapes, type matter and the like may be effaced or destroyed by The Adworks after they have been used in a Project and are no longer needed unless there is a written arrangement to the contrary.

11. INTELLECTUAL PROPERTY

11.1. Client Indemnity – Work involving any form of copying, whether by way of drawings, digital files, photographs, films, magnetic tapes, prints or otherwise is undertaken strictly on the understanding that the Client holds full legal title to any copyright involved. The Client shall indemnify The Adworks in the event of any copyright infringement. In the event of uncertainty, The Adworks reserves the right to contact potential owners for clarification.

11.2. IP Rights – The copyright and/or design rights and/or moral rights and all other intellectual property rights recognised anywhere in the world in any work originated or created by The Adworks ('the Intellectual Property') belongs exclusively to The Adworks and are hereby asserted.

11.3. Licence – Conditional upon the payment of all fees due to The Adworks the Service includes an exclusive licence (non exclusive in respect of any features and aspects of the Services that are generally found in Projects of a similar nature and

which do not give uniqueness to the Project) in respect of the Intellectual Property in the final design work selected by the Client for implementation to use it for the purpose of the Project only but, for the avoidance of doubt, this shall not include the right to modify or alter the work unless expressly agreed.

11.4. Rough work – Under no circumstances shall any work in a rough or uncompleted form be used or published as finished work or otherwise without the prior express written approval of The Adworks.

11.5. Storage of Materials – Following completion of a Project The Adworks may retain artwork and materials as part of its own records but unless it shall have expressly agreed to do so as part of a brief it shall not be obliged to do so.

11.6. Infringement – The Adworks warrants that its work shall be original and will not knowingly infringe third party rights.

11.7. Searches – Unless The Adworks expressly agrees otherwise, it shall not be under any obligation to make any search or enquiry with regard to third party rights such as trademarks, registered designs or market searches.

11.8. Confidentiality of Ideas and Concepts not implemented – The ideas and concepts put forward by The Adworks as part of the Services but which are either rejected by the Client or which do not form part of the final implemented work for any reason shall be the confidential know how of The Adworks and the Client shall not seek to use such ideas for any purpose and shall keep such confidential know how secret and shall not disclose it to any third party until the same shall come into the public domain other than by reason of a breach of a duty of confidentiality due to The Adworks or for a period of 2 years whichever is the longer.

11.9. Services not included in the Contract – The Services shall not include, and Clients are reminded that they must obtain all relevant licences for the use and operation of, inter alia, proprietary software, type faces and/or any media upon which materials delivered by The Adworks as part of the Services are stored.

11.10. Moral right – The Adworks asserts its right to be identified as author of any design work which has been created as a result to the commission, and any publication of that work or reproduction thereof on any finished product shall bear a clear and distinctive credit to The Adworks in a form and manner approved by The Adworks. Any publicity given to the work produced by The Adworks, as part of the Services shall give The Adworks reasonable accreditation, and The Adworks reserve the right to publicise work carried out for any client.

11.11. Multi designs – If more than one design is chosen by the Client and this was not provided for in the agreed brief for the Services an additional fee may be payable by the Client.

11.12. Sub contractors – The Adworks will use all reasonable endeavours to secure the relevant Intellectual Property rights of its freelancers, contractors and sub contractors.

11.13. Illustrators and photographers – Clients are reminded that illustrators and photographers usually retain ownership of the original illustration or photograph and may demand its return undamaged although this should not restrict the Client's use of any illustration or photograph within the negotiated usage rights.

12. CLIENT'S PROPERTY

12.1. Film Processing – Whilst processing standards are carefully monitored, and every care taken of any film processed by The Adworks, whether sent direct by the Client for the express purpose of processing, or as a constituent part of The Adworks's Services, The Adworks's liability for process failure, loss or damage is limited to the replacement of equivalent unexposed film or to the current trade price of unexposed film. The Client should ensure against the loss of any images on film.

12.2. Suitability – Where materials, artwork, photographs, slides, discs, films, negatives, positives, paper and the like are supplied by the Client, The Adworks reserves the right to reject such material if it is, in the opinion of The Adworks, unsuited for the production process involved. Any costs incurred in altering, amending or substituting unsuitable material may be charged to the Client.

12.3. Delivery Date – Where a promised delivery date is given in good faith, and material supplied by the Client is subsequently found to be incomplete, unsuitable, or requiring alteration, The Adworks shall, if it requests, be granted an appropriate extension to the delivery date, or decline production.

12.4. Quantity – Quantities of material supplied by the Client shall be adequate to cover normal production spoilage.

12.5. Third Party Materials – All third party reports, materials, specifications, proposals and information supplied to The Adworks in connection with the Project are held by The Adworks and will be worked on as necessary at the Client's risk. Clients are advised to ensure that they retain copies of such items provided to The Adworks during the course of any Project. The Client is advised to insure high value property supplied to The Adworks.

13. PITCHES

13.1. Fees – All pitches (other than those where purely the credentials of The Adworks are shown) shall be charged for at a previously agreed fee. Where The Adworks agrees to produce initial concepts speculatively, it is on the understanding that the Client has a defined requirement for the work within 30 days of the date of submission, otherwise it shall be charged at The Adworks's prevailing daily rate for the time incurred.

13.2. Intellectual Property – All Intellectual Property rights to any material created by The Adworks and shown as a pitch remains with The Adworks.

13.3. Ideas and Concepts – All ideas and concepts of The Adworks which are disclosed to a Client as part of a pitch are confidential and to remain the property of The Adworks and unless the same shall come into the public domain other than by a

reason of a breach of a duty of confidentiality due to The Adworks, the Client shall not use any such ideas or concepts itself or disclose them to a third party without the written permission of The Adworks.

14. CONFIDENTIALITY

14.1. Confidential Information – Each party shall owe the other a duty to preserve the confidential information of the other (being information of a confidential nature not in the public domain and the disclosure or misuse of which would foreseeably damage the goodwill, business or reputation of the other.)

14.2. Duty to Inform – In the event that the Client shall have cause to disclose to The Adworks specific commercially sensitive information then it shall so inform The Adworks who will comply with the Client's reasonable requirements in this regard.

14.3. Non Solicitation – Whilst The Adworks are providing Services and for a period of six months following the later of:

- a. Completion of the Project on which The Adworks was engaged; or
 - b. Completion of any other business Contract between The Adworks and the Client
- the Client will not contact or engage the services of or employ any person who was and remains an employee of The Adworks during such period except with the written consent of The Adworks.

15. GENERAL

15.1. Illegal Matter – The Adworks shall not be required to reproduce in any form matter which, in the opinion of The Adworks, is or may be of an illegal, defamatory or contentious nature. The Adworks shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any such matter produced by The Adworks or the infringement of any industrial or intellectual property right.

15.2. Title and Risk – The risk in all goods shall pass to the Client upon delivery, but legal and beneficial ownership shall remain with The Adworks until full payment has been received and any cheque or other negotiable security has been honoured. The Client shall pay all accounts in full and not exercise any right to set-off or counterclaim against invoices submitted.

15.3. Implementation – Unless otherwise agreed as part of the Services in the case of graphic design, full responsibility for implementation, display, electronic integration and compatibility, back up and production and manufacture shall remain with the Client.

15.4. General Lien – Without prejudice to other remedies, The Adworks shall, in respect of all outstanding debts due from its Clients, have a general lien on all goods and property in The Adworks' possession (whether worked on or not), and shall be entitled, on the expiration of 14 days notice, to dispose of such

goods or property as The Adworks thinks fit, and to apply any proceeds towards such debts.

15.5. Dispute – In the event of any dispute that cannot be resolved by the individuals with responsibility for the Contract then upon the request of either party, senior representatives of The Adworks and the Client shall meet to discuss the problem and try to reach an acceptable compromise. The parties will consider mediation as a method of resolving any dispute.

15.6. Headings – The headings and sub-headings are inserted for convenience only, and shall not affect the construction of these Conditions of Business.

15.7. Contractors – The Client will be solely responsible for matters concerning contractors and sub contractors that it specifies or nominates and shall take reasonable steps to ensure that they are aware of and comply as appropriate with these conditions so that they co-operate fully with The Adworks

15.8. Samples – The Client shall provide The Adworks free of charge with a reasonable number of samples of any work carried out in connection with a brief.

15.9. Publicity – The Adworks reserves reasonable rights of publicity as a provider of Services to the Client generally and specifically in respect of any work produced as part of a brief provided that where relevant such work shall already be in the public domain.

15.10. Third party rights – A person who is not a party to the Contract has no rights to enforce any term of the Contract pursuant to the Contract (Rights of Third Parties) Act 1999. This shall not effect any right or remedy of a third party that exists or is available independent from that Act.

15.11. Assignment – The Contract is personal to the parties hereto and cannot be assigned in whole or in part.

15.12. Severability – Any of these provisions which may be unenforceable shall (to that extent) be severable.

15.13. Notices – All notices shall be in writing and either delivered personally or sent by first class recorded delivery pre-paid post which shall be deemed duly served in the case of a notice delivered personally at the time of delivery and in the case of a notice sent by post two clear business days after the date of despatch. Each notice shall be addressed to the required office or the principal place of business of the party concerned or to such other address as the party shall have previously have notified to the other in writing.

15.14. Law – The Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.