

TERMS AND CONDITIONS OF BUSINESS

We means Ipscs and you means the person, firm or company we are providing services to.

INTRODUCTION

- 1.1 Co-operation
 - 1.1.1 You agree to help us by making available to us all relevant information and by co-operating with us.
 - 1.1.2 In particular, you agree to give a clear brief to us and ensure that all facts given about the particular project are accurate and in no way misleading.
- 1.2 Basis of our work
 - 1.2.1 Our services (which for the purposes of these Contract Terms includes the provision of any goods) will be supplied to you in accordance with any written estimate which we have supplied to you us accepted by you, or any written order from you which is accepted by us, subject in either case to these Contract Terms, which in the absence of any specific contract between us and you will govern the contract to the exclusion of any other terms and conditions subject to which any estimate is accepted or purported to be accepted, or any such order is made or purported to be made, by you and under no circumstances are any other conditions to be construed as a counter offer.
 - 1.2.2 No variation of these Contract Terms shall be binding unless agreed in writing between your authorised representative and one of our directors.
 - 1.2.3 Our employees or agents are not authorised to make any representations concerning our services unless confirmed by our proprietor in writing by our director in writing. In entering into the contract you acknowledge that you do not rely on and waive any claim for breach of, any such representation which are not so confirmed.
 - 1.2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.
 - 1.2.5 Our written estimate will remain open for acceptance for a period of 30 working days.
 - 1.2.6 We shall be entitled to sub-contract all or part of the work.
 - 1.2.7 If there is a specific contract between us and you and there is any conflict between that contract and these terms, the terms of the specific contract shall prevail.
 - 1.2.8 Time shall not be of the essence in relation to any dates specified by us.

2. APPROVALS, AUTHORITY AND ACCESS#

- 2.1.1 After obtaining your general approval to our design concept we will submit to you for specific approval detailed copy, layouts and artwork.
- 2.2 Authority
 - Your approval of drawings, copy layouts and artwork will be our authority to purchase production materials, prepare proofs and to engage other parties (e.g. photographers, models) and to enter into contracts for other facilities necessary to perform the services under the contract. We shall not be liable for any errors in such drawings, copy layout and artwork which have been approved by you or which have been submitted to you and in relation to which we have not received a response from you within 7 days of submission, except to the extent that such error could not reasonably have been identified by you at time of approval or submission (as appropriate).
- 2.3 Amendments
 - 2.3.1 You may request us to change, reject, cancel or stop any or all design briefs, plans schedules or work-in-progress and we shall take all possible steps to comply provided that we can do so within our contractual obligations to suppliers and other third parties.
 - 2.3.2 In the event of any such cancellation or amendment you will reimburse us for any resulting changes or expenses incurred by us, for charges or expenses to which we are committed and for work which we have carried out for you up to that point. This is in addition to your obligation at Clause 9.3.
 - 2.3.3 Access. You shall ensure that we have access to your premises at whatever times we deem appropriate to enable us to perform the services.

3. CHARGES

- 3.1 Contract Price
 - You will pay us the contract price in accordance with the estimate accepted by us together with any increase in price payable in accordance with Clause 3.5 and any additional charges set out in these terms or agreed by you and us.
- 3.2 Where the estimate shows the contract price in stages you will be invoiced at each stage.
- 3.3 Incidental Expenditure
 - We will bear the cost of UK post and UK telephone expenses but we reserve the right to charge you for exceptional expenses of this nature (e.g. couriers, parcel delivery) and all additional travel, subsistence and accommodation expenses.
- 3.4 Value Added Tax
 - We shall include in our invoices, where appropriate, VAT as an additional charge.
- 3.5 Increase in price
 - 3.5.1 We may increase the cost of our services at any time prior to delivery to reflect any increase to us which is due to any factor beyond our control (such as, without limitation, any foreign exchange rate fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs), any change in delivery dates, quantities or specifications for our services which are requested by you, or any delay caused by any instructions from you or failure by you to give us adequate information or instructions.
 - 3.5.2 Where our estimate is based upon an agreed timetable we may increase the cost of our services if we have to change it to meet your requirements.
- 3.6 Transport, Packaging and Insurance
 - Unless otherwise agreed the contract price is an ex-works price and where we agree to deliver our work to a place other than our premises, you will be liable to pay our charges for transport, packaging and insurance.

4. TERMS OF PAYMENT

- 4.1 Our invoices are payable in pounds sterling within 30 days of the date of the invoice (without any deduction or set off).
- 4.2 If you fail to make any payment of any sum on the due date then, without prejudice to any other right that is available to us, we shall be entitled to:
 - 4.2.1 Cancel the contract or suspend any further work undertaken on your behalf and/or: charge you interest (both before and after judgement) on the amount outstanding at a rate of 6% per annum above the prevailing Abbey base rate until payment is made.
- 4.3 Time for payment shall be of the essence.

5. INTELLECTUAL PROPERTY

- 5.1 When we refer to "Intellectual Property Rights" we mean patents, registered and unregistered trade marks and service marks, registered designs, models, design rights, copyright or any application to register any of the same and any other rights in the nature of intellectual property in the UK or elsewhere relating to the work or services which we undertake for you whether these rights are in existence at the time of our contract with you or created later.
- 5.2 Subject to any specific terms agreed between us in relation to ownership and/or use of the intellectual Property Rights:-
- 5.2.1 We will retain ownership in all intellectual Property Rights. Where we use stock materials (for example, photographs or audio works) from commercial or other libraries, we shall obtain a license for you to use those materials.
- 5.2.2 We grant you a royalty free worldwide and non exclusive license to use the Intellectual Property Rights only for the purposes of the project for which we are engaged by you. This license does not give you the right to grant sub-licenses of the Intellectual Property Rights without our prior consent. This license is conditional upon you paying all the monies due to us. IN the event that you do not pay all the monies due to use, we may terminate this license immediately by notice in writing.
- 5.3 You shall indemnify and keep us fully and effectively indemnified from and against all claims, liabilities, loss, damage, costs and expenses (including legal fees) suffered or incurred by us in connection with the use by you of the Intellectual Property Rights for a purpose other than in relation to the project.
- 5.4 If an infringement of the Intellectual Property Rights occurs, then the following provisions apply:
- 5.4.1 we shall have the sole right to take action against third parties for infringement of the Intellectual Property Rights and if required by us, you shall co-operate fully with us in any such action at our cost;
- 5.4.2 if we fail to take any such action against third parties or to require you to do so may serve on us and upon the expiry of 30 days after the service of such notice you shall be entitled to prosecute such action yourself and at your own expense provided that we have not served notice within the 30 day period of our own intention to take action;
- 5.4.3 you shall in no circumstances settle any claim of action against third parties without our prior written consent;
- 5.4.4 all damages recovered from third parties shall be our exclusive property provided that you shall be entitled to set off any expenses which you are able to claim from us under Clause 5 against damages recovered by you.
- 5.5 You warrant that our use of any materials or information that you supply to us does not and will not infringe the Intellectual Property Rights of whatever nature of any third party and that you are authorised to ask us to use such rights in the performance of this contract. You agree to indemnify us against any loss, damages, costs, expenses or other claims, which we may suffer to incur arising from any such infringement.
- 5.6 We shall return to you at your cost any materials, which you have supplied to us, which we no longer need in order for us to perform the services for you.

6. CONFIDENTIAL INFORMATION

- 6.1 During our performance of the contract, you may provide us with information that you regard as confidential. You may regard the detail of the work that we are doing for you as confidential. We agree to keep this type of information confidential and not to disclose it without your consent. We may disclose to any third party we commission or subcontract as long as we do so in circumstances of confidentiality. We may also disclose your name, your relationship with us and the nature of the work we have undertaken for you in any of our own marketing.
- 6.2 We shall not be under any obligation of confidence about matters that in the public domain or of which we were already made aware. We shall not be in breach of our duty to you if we have to disclose information, which you regard, as confidential to an official body or Court.
- 6.3 During our performance of this contract, we shall be providing you with ideas, concepts and other information. You agree to keep these confidential and only use them for the purpose of considering your instructions to us. In the event that we agree with you not to use certain concepts, ideas or other information then you shall return to us (at our request) destroy all materials relating to those (with any copies in whatever form stored) and will not make any further use of them whatsoever.
- 6.4 The provisions of this Clause 6 shall survive the termination of this contract.

7. INSURANCES

- 7.1 Legal liability
Where insurance is available at commercially reasonable rates we will carry professional indemnity insurance up to £50,000 and we will insure our work until it becomes your property.
- 7.2 Clients Risk
- 7.2.1 You will carry the risk of loss or damage to your property
- 7.2.2 You will be responsible for and insure against the loss or damage to the full value any drawings, specifications, films and other items belonging to you during the time that they are in the possession of us or of a third party or in transit to or from our premises or those of third parties.
- 7.2.3 Risk of damage to or loss of the work that we have done for you will pass to you on delivery which is:-
(i) in the case where we have agreed to deliver our work to your premises, at the time of delivery or, if you wrongfully fail to take delivery, at the time when we have tendered delivery of our work; or (ii) where you are to collect the work from our premises, the time at which we make the work available for collection.

8. LEGAL LIABILITY AND OTHER CLAIMS

- 8.1 Limitation of our Liability
Except in respect of our fraudulent misrepresentation or death or personal injury caused by our negligence:
- 8.1.1 We shall not be liable to you by reason of any representation or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss, profit or otherwise), costs, expenses and other claims for consequential compensation whatsoever (and whether caused by the negligence or default of our employees, subcontractors, agents or otherwise) which arise out of or in connection with the supply to you of our services (whether by us or by any subcontractor or agent) or in their use by you, except expressly provided by these Contract Terms:
- 8.1.2 No action or proceedings in relation to or arising out of our performance of our services for you for any breach of our contract with you shall be commenced against us after the expiry of 3 years from completion of the services or earlier termination of contract;
- 8.1.3 Our liability, if any, to you for loss or damage arising out of any action or proceedings referred to in Clause 8.1.2 shall not exceed the lower of the contract price and the insurance covered to referred to above.
- 8.2 Indemnity to Us
Except in respect of any loss or damage caused by our negligence you will indemnify us against any loss, costs, claims, expenses or fees we may incur relating to any work prepared for you by us and approved by you or which has been submitted to you and in relation to which we have not received a response from you within 7 days of submission.
- 8.3 Warranty
We warrant to you that our work will be carried out with reasonable care and skill. All other conditions, warranties or terms implied by statute or common law are excluded to the fullest extent permitted by law. Where you have a valid claim against us in respect of any of our work which is based on any defects in the quality or condition of our work

- we shall be entitled to replace our work, or the part in question, free of charge or at our sole discretion, refund to you the price of our work (or a proportionate part of the price) but we shall have no further liability to you.
- 8.3.2 Any claim by you which is based on any defect in the quality or condition of our work shall (whether or not delivery is refused by you) be notified to us in writing within 10 days of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If delivery is not refused and you do not notify us accordingly, you will not be entitled to reject the work and we shall have no liability for such defect or failure, and you will be bound to pay the price as if our work had been delivered in accordance with the contract.

8.4 Adjudication

- 8.4.1 Any dispute or difference between us arising out of this agreement may be referred by either of us to adjudication.

9. TERMINATION PROVISIONS

9.1 We may, without prejudice to any of our other rights, suspend the work we are undertaking for you and/or by notice in writing to you terminate our contract with you if:-

9.1.1 An order is made or a resolution is passed for your winding-up: or

9.1.2 a receiver, administrative receiver is appointed over any of your assets or undertaking: or

9.1.3 (being and individual) an order is made for your bankruptcy; or

9.1.4 you are unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986 (or any statutory re-enactment or modification of the Act) or you make a composition with your creditors; or

9.1.5 you suffer any analogous proceedings to those at 9.1.1 to 9.1.4 in any other jurisdiction or under any foreign law; or

9.1.6 you fail to pay any sum due on the due date; or

9.1.7 you in any other manner whatsoever materially breach any provision of the contract and fail to remedy such breach within 7 days of being notified of it by us.

9.2 You may by notice in writing to us terminate the contract if one of the sub clauses at 9.1 to 9.7 applies to us.

9.3 If you terminate the contract (other than in accordance with Clause 9.2) prior to the work being completed, or if we terminate the contract in accordance with Clause 9.1 you will be liable to pay us:

9.3.2 all costs and expenses incurred by us up to date of termination;

9.3.3 compensation for loss of profit on work undertaken but not yet billed and work not yet undertaken; and

9.3.4 our costs incurred in respect of sub-contractors and suppliers, including fees for work carried out and any compensation or early termination.

9.4 Force Majeure

9.4.1 For the purposes of this sub-clause "Force Majeure" shall mean any circumstances or events beyond a party's reasonable control including but not limited to, act of god, war, riot, trade embargo, strike, lock out, trade dispute, breakdown of plant or machinery, difficulty or increased expense in finding workmen, materials or transport, accident, fire, flood, storm, any order of local or national government or international authority or any other circumstances affecting the performance of the obligations set out in the contract.

9.4.2 If either party is affected by Force Majeure it shall immediately notify the other party of the nature and extent of it.

9.4.3 Neither party shall be deemed to be in breach of the contract or otherwise liable to the other by reason of any delay in the performance or non-performance of any of its obligations under the contract to the extent that such delay or non-performance is due to Force Majeure of which it has notified the other party and the time for performance of that obligation shall be extended accordingly.

10. ADVERTISING STANDARDS

10.1 In Order to satisfy the requirements of the Advertising Standards Authority, the British Code of Advertising Practice, the British Code of Sales Promotion Practice and other codes of advertising standards laid down voluntarily within the advertising industry ("the codes") or any statutory requirements and in the interests of yourselves, ourselves and the public you agree to supply us immediately with objective factual evidence, if so required, in support of any product claims you wish us to make.

10.2 You agree to inform us without delay if you consider that any claim or trade description in any materials submitted to you by us for approval is false or misleading in relation to your product or service having regard to, amongst other things, the codes.

10.3 We shall not be liable for any breaches of the Codes or other relevant statutes where you have approved any advertising material prepared by us or which has been submitted to you and in relation to which we have not received a response from you with 7 days of submission.

10.4 You shall indemnify and keep us fully and effectively indemnified from and against all claims, liabilities, loss, damage, costs and expenses (including legal fees) suffered or incurred by us in connection with your breach of this Clause 10.

11. TITLE

11.1 Notwithstanding the delivery and the passing of risk in our work, or any other provision of these Contract Terms, ownership in the materials that we provide to you shall not pass to you until we have received in cash or cleared funds payment in full of the price for our work and all other work agreed to be undertaken by us for you for which payment is then due.

11.2 Until such time as the ownership in the materials that we provide to you passes to you, you will hold our work and materials as our fiduciary agent and bailee, and will keep it separate from your own property and that of third parties, properly stored, protected and insured and indemnified as our property.

11.3 Until such time as the ownership of the materials that we provide to you passes to you, we shall be entitled at any time to require you to deliver up our work to us and if you fail to do so, forthwith to enter upon any of your premises or that of a third party where our work is stored and to re-possess it.

12. GENERAL

12.1 The formation, interpretation and operation for this contract shall be governed by English Law and you agree to submit to the exclusive jurisdiction of the English Courts in all matters regarding it except to the extent that we invoke the jurisdiction of the courts of any other country.

12.2 Any notice required or permitted to be given by either party to the other under these Contract Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may have been notified pursuant to this clause to the party giving the notice and may be delivered personally, by first class post, by first class airmail, letter or by fax. A notice shall be deemed to have been served if personally delivered at the time of delivery, if sent by first class post 48 hours after posting. If delivered by first class airmail letter 7 clear days after posting or if sent by fax at the time of transmission.

12.3 No waiver by us of any breach by you of any of these Contract Terms shall be considered as a waiver of any subsequent breach of the same day or any other provision.

12.4 You shall not assign or transfer the benefit and/or burden our contract with you (or any part of it) to any third party without our prior written consent.