

STANDARD TERMS OF BUSINESS

1. Definitions

- 1.1 Company – Passion Marketing & Design. Trading address is Maple House, Bayshill Road, Cheltenham, Gloucestershire, GL50 3AW.
- 1.2 Contract – these terms and conditions and the document agreed between the parties setting out the parts, Specification of Goods and Services, any Target Completion Date and the Contract Price.
- 1.3 Contract Price – the price agreed between the parties for the Goods and Services.
- 1.4 Goods – the goods set out in the Specification
- 1.5 Services – the services set out in the Specification
- 1.6 Specification – the specification of the Goods and/or the Services to be provided under the Contract set out in writing and agreed by both parties

2. Basis of the Contract

- 2.1 The Company agrees to supply the Goods and to provide the Services to the Client and the Client agrees to pay the Contract Price in accordance with the terms of the Contract.
- 2.2 Any quotation or estimate provided by the Company shall not constitute a contractual offer, and a Contract shall only be formed on acceptance by the Company of the Client's order.
- 2.3 These terms and conditions shall apply to all contracts for the provision of goods and/or services by the Company to the Client to the exclusion of all other terms and conditions including any terms and conditions which the Client may purport to apply under any order or other document. In the case of any conflict or ambiguity between the Client's original specification and the Specification set out on this document, the latter shall prevail.
- 2.4 Acceptance of delivery of the Goods or provision of the Services or any of them shall be deemed conclusive evidence of the Client's acceptance of the Contract.
- 2.5 The Company may employ sub-contractors to carry out any part of its obligations under the Contract at its sole discretion and it may assign its rights and obligations under the Contract to any other party. The Company acts as principal in all contracts, save where expressly agreed to the contrary. The Client may not assign its rights and obligations under this Contract without the written consent of the Company.
- 2.6 No contract shall be concluded between the Company and the Client on these terms or otherwise except by authority of a Director or other expressly authorised signatory of the Company.
- 2.7 Any variation of these terms and conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a Director or other expressly authorised signatory of the Company.
- 2.8 Any tender or quotation submitted by the Company to the Client shall be subject to these terms and conditions unless otherwise stated and shall be valid for 60 days and may be revoked at any time.
- 2.9 Any reference in the Contract to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

3. Client's Responsibilities

- 3.1 The Client will provide the Company with such information, copies, logos, drawings and designs as it may reasonably need concerning the Client's operations and answers to queries, decisions and approvals which may be reasonably necessary for the Company to perform the Contract and will maintain a copy of any original electronic files. The Client is responsible for ensuring that such material (including but not limited to the accuracy of supplied input from an electronic file) and answers are accurate and complete.
- 3.2 The Client will obtain all necessary licences or authorities that may be needed in connection with the Goods or Services.
- 3.3 Any property belonging to the Client shall while it is in the Company's possession or in transit to or from the Client be deemed to be at the Client's risk unless otherwise agreed and the Client will be responsible for insuring it accordingly. The Company shall be entitled to make a reasonable charge for the storage of any of the Client's property left with the Company before the Contract is performed or after the Contract has been completed.
- 3.4 The Client shall be responsible for providing the Company with seven days notice in writing prior to the Target Completion Date if it requires the Company to download any digital data from its equipment or supply the Client with the same on disc, tape or by any communication link or if it requires the Company to retain any type, lithographic or photogravure film and plates, tapes and discs or other work which will be effaced immediately after the Contract is completed. The Company may charge additional charges where such notice is given.

4. Payment Provisions

- 4.1 The Contract Price shall be agreed between the parties in writing before performance of the Contract.
- 4.2 In addition to the Contract Price the Company will be entitled to retain media commission based on the current published rates for advertising in all media, provided that in the event of the media rate being less than 10%, the Company may invoice the balance to the Client in addition to the other charges payable hereunder.
- 4.3 The Company reserves the right by giving notice to the Client at any time before completion of its performance of the Contract to increase the Contract Price if:
 - 4.3.1 the costs to the Company of providing such Services or Goods increase due to any factor beyond the control of the Company;
 - 4.3.2 The Client changes the Specification;
 - 4.3.3 The Client agrees to any change to the Specification proposed by the Company;
 - 4.3.4 The Client causes any delay;
 - 4.3.5 Goods or Services are required by the Client with exceptional urgency;
 - 4.3.6 The Client fails to give the Company adequate or accurate information, instructions or facilities in accordance with clause 3;
 - 4.3.7 Where an electronic file is not suitable for outputting on equipment usually adequate for the such purposes without adjustment or other corrective action'
 - 4.3.8 The Company's normal hourly charging rates increase.
- 4.4 Unless alternative payment provisions are agreed, the Company may submit an invoice or invoices at any time during or after performance of the Contract in respect of such part of the Goods delivered and such part of the Services performed to that date. The Company may submit an invoice for any balance of the monies due under the Contract immediately on delivery of any balance of the Goods or provision of Services. Invoices shall be sent to the Client's address recorded in this Contract unless otherwise agreed.

- 4.5 Unless otherwise agreed all sums due under the Contract will be paid by the Client within 30 days of the date of receive of an invoice without any deduction, set-off, counterclaim or abatement and time for payment shall be of the essence. The Company may specify which currency and method of payment it requires the Client to use.
- 4.6 The Contract Price does not include VAT or any similar sales tax, import or custom duties which will be paid additionally by the Client at the then prevailing rate, if applicable.
- 4.7 The Contract Price does not include carriage, packing or insurance unless expressly stated, and such sums may be added by the Company to the Contract.
- 4.8 The Contract Price does not include disbursements including without limitation the following items unless expressly stated, and the Client may be required to pre-pay the Company for such disbursements or such sums may be added to the Contract Price by the Company:-

- Accommodation and subsistence
 - Advertising, artwork and mechanical items
 - Design, artwork and print
 - Direct mail
 - Entertainment
 - Exhibition and display material
 - Film production
 - Market research Media monitoring (radio, television and press)
 - Messenger services
 - Newspapers and magazine subscription
 - Photocopying and stationery
 - Photography and prints
 - Postage, telephone and facsimile transmissions
 - Press material production and distribution
 - Special events, meetings, conferences etc.
 - Telecommunications
 - Travel
 - Any levy imposed by the Advertising Standards Board of Finance.
- 4.9 No act or omission of the Client which prevents the Company from delivering the Goods or continuing to perform the Contract or to perform it according to any agreed time-scale shall prevent the Company from raising invoices in accordance with this clause 4.
 - 4.10 If the Client fails to make any payment within the time specified in this Contract the Company may take any or all of the following steps.
 - 4.10.1 immediately invoice the balance of the monies due under the Contract in advance of the delivery of any further Goods or the supply of any Services;
 - 4.10.2 cancel the Contract and any other contract between the Company and the Client;
 - 4.10.3 charge the Client simple interest (both before and after any judgement) on the amount unpaid at the rate of 4% per annum above the Lloyds TSB Bank Plc base lending rate from time to time until payment in full is made, accruing on a weekly basis;
 - 4.10.4 appropriate any payment made by the Client and set-off any monies due to the Client, whether under this Contract or any other contract or otherwise (including any VAT applicable), to or against the unpaid invoice or invoices;
 - 4.10.5 refuse to deliver any further Goods or provide any further Services or guarantee services, whether under this Contract or any other contract or otherwise, until payment is made in full;
 - 4.10.6 retain any property of the Client then in its possession under a general lien for any payment in respect of any other instalment.

5. Goods

- 5.1 Any Goods shall be at the Client's risk as from delivery save for damage caused to the Goods by any negligent act of the Company or any of its sub-contractors and the client will be responsible for insuring the Goods from the time risk passes.
- 5.2 In spite of delivery having been made, legal title in the Goods passes to the Client, and provided that the Client is in default in payment or the Company in good faith has doubts about the solvency of the Client, the Client shall on request deliver up such Goods as have not ceased to be in existence or resold, to the Company. If the Client fails to do so, the Company may enter upon any premises owned, occupied or controlled by the Client where the Goods are situated and repossess the Goods using only such force as may be necessary.

6. Delivery

- 6.1 Unless otherwise agreed the Company will be responsible at the Client's cost for the delivery of the Goods.
- 6.2 The Client shall take delivery of the Goods notwithstanding that the quantity delivered is greater or less than that contained in the Specification, provided that-
 - 6.2.1 such discrepancy shall not exceed 10%
 - 6.2.2 the Company shall at its discretion either make up any shortfall or adjust the Contract Price pro rata to the discrepancy, provided that it is notified in writing of the shortfall within 7 days of delivery and is given the opportunity, if required to examine the Goods before they are used or resold by the Client.

7. Time-scale

- 7.1 The Company will use all reasonable endeavours to provide the Goods and Services according to any agreed timescale or Target Completion Date but such timescale, including without limitation any estimated publication dates, will be treated as target dates only and time will not be of the essence.
- 7.2 In particular, but without limitation, the Company shall not be responsible for delay caused by factors beyond its control, including failure of the Client to comply with clause 3.
- 7.3 The Company reserves the right by giving notice to the Client at any time before delivery of the Goods or performance of any Services to change the Target Completion Date if-
 - 7.3.1 the Client changes the Specification or agrees to any change to the Specification proposed by the Company;
 - 7.3.2 the Client causes any delay;
 - 7.3.3 the Client fails to give the Company adequate or accurate information, instructions or facilities in accordance with clause 3.

8. Authority, Acceptance, Errors

- 8.1 Following the general approval of Specification and, where applicable, media schedule, campaign or project plan, the Company will submit to the client for its specific approval as may be relevant:
- 8.1.1 proofs, copies, layouts, artwork, storyboards and/or scripts, draft press releases, articles, photographs, captions;
 - 8.1.2 media schedules for time space and other facilities;
 - 8.1.3 Estimates of the disbursement and other costs required in accordance with the Specification.
- 8.2 Within 7 days of the receipt the Client of the item(s) referred to in clause 8.1, the Client shall notify the Company in writing whether or not they wish to change, reject, cancel or stop any or, all plans, schedules or work in progress. Where applicable, the Client shall return the proofs etc. duly marked approved or amended by a duly authorised person within that time period. The Company shall, however, be entitled to rely upon verbal approval or other instructions received from the Client.
- 8.3 If no such notification is received within that period, the Client shall be deemed to have accepted the item concerned, whether or not expressly requested to approve. After acceptance, whether deemed or otherwise, the Client shall not be entitled to reject the item not to have any defects in the proof remedied by the Company, whether or not they comply with the Specification, without the consent of the Company, in which event the Company may levy reasonable additional charges of such work.
- 8.4 The approval of items will constitute the Company's authority where applicable for:-
- 8.4.1 purchase production materials and prepare a proof. The approval of the proof will constitute authority to publish;
 - 8.4.2 incur disbursements.
- 8.5 If the Client notifies the Company of its intention to reject, cancel or stop all plans, schedules or work in progress in accordance with clause 8.2, the Company shall use its best endeavours to comply with the Client's request provided that it can do so within its contractual obligations to media and suppliers.
- 8.6 In the event of any cancellation or amendment the Client shall reimburse the Company for any charges or expenses to which it is committed and will also pay the Company's fees covering these items.
- 9 Intellectual Property**
- 9.1 Any intellectual property rights including without limitation copyright in the Goods or in any designs, logos or specifications produced by the Company for the purpose of the Contract or assigned to the Company shall remain the property of the Company, subject to contrary agreement in writing between the parties. No right or license is granted except the right to use or resell the Goods.
- 9.2 All copyright in all artwork and layouts and other work created for the Client by the Company in respect of the Services vests in the Company unless arrangements are made to the contrary. If the Client so requests, and provided that all obligations arising from the Contract have been met the Company may at its discretion assign such copyright to the Client on termination of the Contract, provided that the Company may levy an additional charge for doing so.
- 9.3 To the extent that the Client supplies the Company with any original copyright material, the Client grants a licence to the Company to publish, reproduce, adapt, sell and otherwise use without limitation any such material for the purposes of its performance of this Contract but not otherwise.
- 9.4 At termination any unused advertising or other material prepared by the Company, whether the subject of copyright or not, shall remain the Company's property and shall not be used by the Client subsequently, regardless of whether or not the physical embodiment of any creative work is in the Client's possession in the form of artwork, layouts etc.
- 10 Warranties and Indemnities**
- 10.1 The Company warrants that the Goods and the Services will comply with the Specification.
- 10.2 The Company does not warrant the precise circulation of any publications in which the Client's material or advertising may be published and the Client has not relied upon any such warranty.
- 10.3 The Company does not warrant that there may not be any variation in colour between colour proofs and the completed job and the client agrees to accept a reasonable variation.
- 10.4 The Client warrants that it has not relied on any representations made by or on behalf of the Company or upon any descriptions, illustrations or specifications contained in any material produced by or on behalf of the Company save for the Specification of the Goods and Services as agreed between the parties.
- 10.5 The Client warrants that any copy, logo, specification, design, instruction or other material supplied by it to the Company will not infringe any intellectual property or other rights of any third party, nor will it be defamatory or otherwise unlawful, nor infringe the Trade Descriptions Acts, and the Client will indemnify the Company in respect of any claim relating to such infringement.
- 10.6 The Client agrees to indemnify the Company against all costs and liabilities incurred by it due to any breach by the client of the terms of this Contract, including any loss of profit and consequential losses.
- 10.7 The Client agrees to abide by the rulings of the Advertising Standards Authority, the British Code of Practice, the British Code of Sales Promotion Practice, the IBA Code of Advertising Standards and Practice for radio and television and any other codes of advertising standards laid down voluntarily within the advertising industry to ensure that all advertising placed by the Company is legal, decent, honest and truthful.
- 10.8 The Client warrants that all the facts, claims and offers given by it about its products or services are accurate and in no way misleading and that the terms of any offer contained therein will be honoured. The Client shall inform the Company without delay if it considers that any claim or trade description in any material submitted by it to the Company for its approval is false or misleading in relation to its products or services and it agrees to immediately provide the Company with objective factual evidence relating to the claims made by it if required by the Company.
- 10.9 The Client will indemnify the Company against any loss it may incur as a result of any civil claims or proceedings brought against it based upon any material prepared by the Company for the Client and approved by the Client before publication.
- 10.10 The Client will maintain sufficient insurance against liability to the Company arising under the Contract.
- 11 Limitation of Liability**
- 11.1 The Company shall not be responsible for any errors or defects in the Goods or the Services which are not notified in writing to it in accordance with clause 8, nor for any errors which are approved by or are the fault of the Client or any third party.
- 11.2 The terms of this Contract represent the whole agreement between the parties and all other warranties, conditions, terms, undertakings or representations of any kind, whether express or implied, statutory or otherwise relating to the provision of any goods or services under or in connection with the Contract including (without limitation) as to the condition, quality, performance or fitness for purpose of any goods or the standard of care used in the provision of services are hereby expressly excluded from the Contract save for the undertakings implied by the Sale of Goods Act 1979 Section 12 in respect of title to any goods.
- 11.3 The Company shall not be liable under contract, tort (including negligence) or otherwise for any loss of production, loss or corruption of data, loss of profits or of contracts, loss of operation time, loss of goodwill and loss of anticipated savings, nor for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused.
- 11.4 The Company accepts liability for death or injury caused by the negligence of the Company, its employees, agents or sub contractors in the course of their engagement under this Contract, and liability which cannot be excluded under the Consumer Protection Act 1987 Part 1 or otherwise in law, without limit.
- 11.5 In all other cases not falling within Clause 11.4 the Company's total liability (whether in contract, tort including negligence or otherwise) under or in connection with the Contract or based on any claim for indemnity or contribution shall not exceed three times the Contract Price in aggregate.
- 11.6 The Client agrees that except as expressly provided in this Contract the Company will not be under any liability of any kind whatever and however caused, arising directly or indirectly in connection with this Contract.
- 11.7 Any liability of the Company under the Contract shall be subject to and conditional upon the due performance by the Client of all its obligations under this Contract and, subject to these terms, the Client shall not be entitled to withhold or delay payment or exercise any right of set-off which might otherwise have been available to it.
- 11.8 The Client acknowledges and agrees that the allocation of risk contained in this clause 11 is reflected in the Contract Price and is a recognition of the fact that because of the nature of the Company's business, the Company does not warrant that Goods and Services will be entirely error free.
- 12 Termination**
- 12.1 The Company may terminate this Contract or suspend its performance with immediate effect on written notice if:-
- 12.1.2 the Client ceases or threatens to cease to carry on its business or becomes insolvent;
 - 12.1.3 a Receiver, Administrator or similar Officer is appointed over all or any part of the assets or undertaking of the client.
 - 12.1.4 the Client commits a material breach of this agreement and (in the case of a breach capable of remedy) fails to remedy it within 7 days of receipt of written notice from the Company specifying the breach and containing a warning of an intention to terminate if the breach is not remedied;
 - 12.1.5 the Client goes into liquidation save for the purposes of a genuine amalgamation or reconstruction;
 - 12.1.6 the Client refuses to take delivery of the Goods or any part of them;
 - 12.1.7 the Client defaults in paying the Contract Price or any part of it;
- 12.2 In the event of a suspension, the Company shall be entitled to demand pre-payment of any part of the Contract Price not yet due for payment as a condition of re-commencing its performance.
- 12.3 The Company may terminate this Contract at its discretion at any time in any event by giving 14 days notice in writing to the Client.
- 12.4 Upon termination of this Contract for whatever cause the Client shall pay to the Company all monies due to the Company at that date after taking into account amounts previously paid including:
- 12.4.1 the total value of Goods delivered and Services performed up to the date of termination, the Contract Price for which shall then become payable immediately notwithstanding any prior contrary agreement.
 - 12.4.2 any cancellation charges payable to the Company's sub-contractors;
 - 12.4.3 the cost of the goods or services ordered for the purposes of the Contract for which the Company has paid or is legally bound to pay;
 - 12.4.4 any other costs incurred by the Company in connection with the Contract or its termination including but not limited to loss of profits, processing costs already incurred and any reduction in the value of the material used.
- 12.5 Termination of this Contract shall not affect any rights of the parties accrued to them up to the date of termination.
- 13 Confidential Information**
- 13.1 The Company acknowledges a duty not to disclose without the Client's permission any confidential information resulting from studies or surveys commissioned and paid for by the Client. The Client in turn acknowledges the Company's right to use as it sees fit any general marketing or advertising intelligence in the field on the Client's product or service which it has gained during the course of its appointment.
- 13.2 During the course of its appointment the Company acknowledges its responsibility to treat in confidence all marketing and sales information and statistics and other confidential material to prevent unauthorised publication or disclosure of same.
- 14 Miscellaneous**
- 14.1 Neither party shall be liable for any delay in performing or failing to perform any of its obligations under this Contract due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or other event beyond the reasonable control of either party.
- 14.2 All notices to be given under this Contract shall be in writing and shall be sent to the normal business address of the party concerned by first class post or by hand.
- 14.3 No delay or failure by the Company to exercise any of its powers, rights or remedies under this Contract will operate as a waiver of them and any waiver, to be effective, must be in writing.
- 14.4 If any part of this Contract, including for the avoidance of doubt limitation clause 11, is found by a court or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Contract which will continue to be valid and enforceable to the fullest extent permitted by law.
- 14.5 This Contract is the complete and exclusive statement of the agreement between the parties relating to the subject matter of the Contract and supersedes all previous communications, representations and other arrangements, written or oral. This clause and any guarantee contained herein do not affect the statutory rights of the consumer.
- 14.6 This Contract will be construed in accordance with and governed by the law of England and Wales and each party agrees to submit to the jurisdiction of the courts of England and Wales.