

CONDITIONS OF SUPPLY OF GOODS AND SERVICES

The following conditions apply to the Contract (see definition below) and each future request for the supply of goods and/or services received by the Company from the Customer (see definition below) from time to time unless otherwise agreed in writing. The communication of a request by the Customer to the Company for the supply of goods and/or services shall amount to the Customer's acceptance of these conditions. These conditions shall take precedence over any terms and conditions of the Customer, whether attached to, enclosed with or referred to in any purchase order of the Customer or otherwise. They may not be modified without the written agreement of the Company. Any additional conditions agreed in writing between the Company and the Customer shall take precedence over these conditions of supply in the event of any conflict, unless otherwise agreed.

DEFINITIONS

In these conditions of supply the following words shall have the meanings set out below:

“Brief” means the written brief describing the Deliverables, their intended use and any pre-set timings for supply, signed by the Customer and submitted to the Company in advance of conclusion of the Contract.

“Company” means The Owen Agency Limited whose registered office is at 20 South Street, Havant, Hants, PO9 1DA, a company registered in England with company number 01945200 (which shall include its sub-contractors, assignees or successors).

“Contract” means the contract consisting of the Company's estimate, these conditions and the Brief.

“Customer” means the person, firm or company described as such in the Brief.

“Deliverables” means the goods and/or services to be supplied by the Company under this Contract, described in the Brief.

“Intellectual Property” means all copyright and related rights, design rights (whether registered or unregistered), patents, rights in trade

marks (whether registered or unregistered), database rights and any other intellectual property rights (including all similar or equivalent rights or forms of protection) in any part of the world.

“Job Cost” means the fee to be charged by the Company for the Deliverables and specified in the Company's estimate or subsequently agreed by the parties or as amended from time-to-time in accordance with these Conditions.

THE COMPANY'S OBLIGATIONS

The Company will use its reasonable care and skill in the production and supply to the Customer of the Deliverables as per the Brief and any other requirements identified as part of the project and accepted by the Company, and in the selection of media and other external suppliers if not nominated by the Customer.

ESTIMATES

Estimates are based on the Company's current cost of production (or third party media or external suppliers' costs where appropriate) as at the date of provision of the estimate and unless otherwise agreed are subject to amendment by the Company (or media / external suppliers where appropriate) on or anytime after acceptance by the Customer to meet any rise or fall in such costs. The Company shall notify the Customer of all such changes as soon as reasonably practicable upon becoming aware of such changes.

PAYMENT

The Job Cost shall be paid by the Customer within 30 days of the date of the Company's invoice. Payment shall be made to the Company by cheque or BACS.

The Company shall be entitled to charge and be paid for any increased cost incurred for expedited delivery or any other matter requested by the Customer outside of the Brief and/or Job Cost or arising from unclear or illegible copy or materials supplied by the Customer.

The Customer shall not be entitled to withhold payment of any amount due to the Company by reason of any payment credit, set off, counterclaim,

allegation of incorrect or defective goods or work or for any other reason whatsoever which the Customer may allege excuses it from performing its obligations under the Contract.

Without prejudice to any other right or remedy that it may have, if the Customer falls to pay the Company on the due date, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

The Company reserves the right to require the Customer to pay the total Job Cost up front before the Company commences any work. If a final Job Cost has not been agreed at the time of concluding the Contract, the Company will require the Customer to pay a percentage of the estimated total Job Cost in advance to cover the Company's time attending meetings and/or producing Deliverables in advance of a final sign-off by the Customer of the Job Cost.

All estimates and the Job Cost are, unless specifically provided otherwise, exclusive of Value Added Tax and any other statutory charges that may be applicable.

EXPENSES / MEDIA CHARGES & TERMS

Unless included within the Job Cost, the Company will, where practicable, endeavour to estimate the cost of any external services to be used in relation to the Deliverables and shall invoice such expenses to the Customer at cost.

Media charges will be based on the current published rates for the media specified in the Brief or otherwise requested by the Customer and will be charged to the Customer at cost. Whatever commission is allowed by the media shall be retained by the Company.

Where such expenses are likely to be significant, the Company reserves the right to require the Customer to pay the full amount of the expected expenses in advance.

The Company's contracts with media and other external suppliers in relation to the Deliverables shall be entered into as principal and not as agent and shall be made in accordance with media rate cards or other standard or individual conditions and contracts. The rights and liabilities as between the Company and the Customer shall correspond to those between the

Company and the various media and external suppliers, including in particular any rights of amendments, omission and cancellation.

PRELIMINARY WORK

Work carried out at the Company's request, whether experimental, part of a creative concept, pitch or otherwise, will be charged for and all such preliminary work carried out by the Company remains the Company's property until paid for in full.

The provisions of condition 10 shall apply insofar as they are relevant to Intellectual Property in such preliminary work, save that the purpose, duration and extent of any licence granted to the Customer to use such preliminary work shall be subject to the Company's written agreement.

References to Deliverables in these conditions shall include preliminary work where relevant.

PROOFS

Written approval by the Customer of final copy, layouts, scripts, storyboards, designs and the like will be the Company's authority to proceed with production or publication as appropriate.

Where artwork or other materials are sent to the Customer for final approval, the Customer shall check it carefully and notify the Company in writing of any errors or alterations. The Company will use its reasonable endeavours to effect any changes so notified but reserves the right to charge extra if any alterations go beyond the original Brief. Where notification of errors does not occur at all before publication, the Company will not be liable in respect of any such errors.

DELIVERY

Any time for performance of the Company's obligations under the Contract shall be reckoned from the date upon which the Company receives all the necessary information and documentation to enable it to proceed with the production of the Deliverables without interruption and/or reckoned in accordance with the terms of contract with any media or other external supplier.

The Company will use reasonable endeavours to supply and/or procure the

supply of the Deliverables within any specified delivery time; however, the Customer acknowledges that such delivery time is an estimate only and not a term of the Contract. It is hereby agreed that time for delivery is not of the essence.

Any delivery time specified by the Customer shall be extended by any period or periods during which the manufacture or delivery of Deliverables by the Company is delayed due to fire, explosion, flood, storm, tempest, sabotage, strikes, official and unofficial riot, invasion, terrorism, acts of war (whether war be declared or not) shortage of labour, power or materials, delays by the Company's suppliers (whether media or otherwise), civil commotion, accidents, plant breakdown, technical difficulty, seizure, or other actions by or in compliance with an order of a competent authority, and any other event or circumstances beyond the control of the Company. Notwithstanding such delays, the Customer shall take and pay for at a proportionate rate of the Job Cost such of the Deliverables as shall be tendered by the Company and be ready for delivery upon the occurrence of any such event.

Any damage to or loss of goods in transit must be notified in writing to the Company within 3 days of receipt of goods by the Customer. All other claims must be made in writing to the Company within 28 days of delivery. In the absence of such written claim being notified to the Company then it shall not be liable in respect of any claim raised by the Customer. Notwithstanding this, the Company shall in no circumstances be liable for any loss to the Customer arising in delay in transit not caused by the Company.

The Company shall be entitled to charge for and be paid all delivery and insurance costs incurred and not specifically included in the Job Cost.

INTELLECTUAL PROPERTY

The Customer shall have a royalty free licence, coming into effect on payment of the relevant invoice, to use the Intellectual Property in the Deliverables for the purposes, in the territories and in respect of the products or services defined in the Brief. Such licence shall be automatically terminated if the Customer:

Does not pay the Job Cost in full by the due date; or

(Being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or

reconstruction) or a court makes an order to that effect; or

(Being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or

Becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

Has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets;

Ceases, or threatens to cease, to carry on its business.

If the Customer wishes to use the Deliverables in ways going beyond the parameters specified in the Brief it must gain the Company's prior written consent.

Insofar as use of the Deliverables as per the Contract involves use of third party material, the Customer shall secure such licence(s) as is necessary to allow the required use of the same.

Subject to the above and to the Intellectual Property of any third party, ownership of the Intellectual Property in the Deliverables shall remain vested in the Company unless and until any assignment or other disposition of such Intellectual Property is agreed between the parties in writing.

For the avoidance of doubt, where the Company makes any presentation to the Customer going beyond the Brief, the Customer shall have no right to make use of any material contained in such presentation unless and until a separate contract is concluded between the parties.

Use of the Deliverables as per the Brief may involve the Customer in continuing liability to third parties, for example for royalties, licence fees and performance fees. The Company will endeavour to notify the Customer of these as soon as reasonably practicable.

STORAGE OF MATERIAL

All materials owned by the Company and used by it in the production of the Deliverables shall remain its exclusive property. Materials supplied by the

Customer shall remain the Customer's property.

The Company reserves the right to destroy its materials at any time unless otherwise agreed by the Company at the request of the Customer

CUSTOMER'S MATERIAL

Except in the case of a Customer who is not contracting in the course of a business nor holding himself out as doing so, the Customer's property and all property supplied to the Company by or on behalf of the Customer shall, while it is in the possession of the Company or in transit to or from the Company, be deemed to be at the Customer's sole risk.

The Company may reject any materials supplied or specified by the Customer which appear to the Company to be unsuitable.

Quantities and materials supplied by the Customer must be adequate to cover normal spoilage.

COMPLIANCE

It shall be the sole responsibility of the Customer to ensure that the Deliverables comply with all local laws (whether consumer, public or civil), regulations and codes in all countries in which use is intended as stated in the Contract. It shall also be the Customer's responsibility to ensure that the Deliverables carry all disclaimers, warnings and public information which any competent lawyer of the Customer in any of the relevant jurisdictions would advise.

ILLEGAL AND UNLAWFUL MATTER

The Company shall not be required to print any matter that, in its opinion, is or may be of an illegal, obscene, immoral, improper or libellous nature or otherwise likely to involve the Company in legal proceedings of any nature.

THIRD PARTY INTELLECTUAL PROPERTY

If any Deliverables use any Intellectual Property owned by the Customer or under its control, it is agreed that the Company shall have the right to use or allow use of any such Intellectual Property for the purpose of fulfilling the Company's obligations under this Contract. The Company shall not gain any rights over such Intellectual Property by virtue of such use, but the Company

shall be entitled to use the Intellectual Property both during and after the production and supply of the Deliverables to promote and advertise its own work.

It shall be the Customer's responsibility to ensure that all Intellectual Property and domain names used in connection with the Deliverables are wherever practicable properly registered and do not infringe any third party Intellectual Property and that any Intellectual Property of the Customer or any third party used in the Deliverables, including such Intellectual Property as is supplied by the Company as part of the Brief, are used in a manner which neither undermines or infringes the Customer's, the Company's nor any third party's Intellectual Property.

INDEMNITY

The Customer shall indemnify and hold harmless the Company in respect of any claims, costs, liabilities and expenses (including legal expenses) arising out of any libellous matter printed for the Customer or any infringement of any Intellectual Property of any third party. This indemnity shall extend to any amounts paid on legal advice in settlement of any claim, whether or not the same was comprised in proceedings.

PUBLICITY AND EXAMPLES

Notwithstanding the licences described in condition REF_Ref171940324 \r \h 10.1 above or any other disposition of the Intellectual Property in the Deliverables agreed between the parties, the Company shall have a continuing right to use the Deliverables for the purposes of advertising or otherwise promoting the Company's work.

The Customer shall unless otherwise agreed mark all design work supplied as part of the Deliverables with the phrase "Design by The Owen Agency Limited" (or appropriate variants as agreed) in a suitable place. The Customer may request the consent of the Company to the non-appearance or removal of this credit in any particular case. The Customer shall not reasonably withhold or delay such consent.

CONFIDENTIAL INFORMATION

Neither party shall divulge any confidential information which is supplied to it by or about the other party in the course of this Contract or pre-Contract

discussions, other than information forming part of the public domain otherwise than through a breach of this condition or any other obligation of confidence.

PROPERTY AND RISK

The risk in the Deliverables shall pass to the Customer on delivery in accordance with the Contract.

Until the Company has been paid in full for the Deliverables

The property in the Deliverables shall remain vested in the Company and the Customer shall hold the Deliverables as bailee only. The Customer shall not sell the Deliverables nor shall the Customer part with possession of the Deliverables unless in the latter event the Company gives express consent in any particular case and, if such Consent is given, the Customer shall expressly inform the person into whose possession the Deliverables are put that ownership thereof remains vested in the Company and that the possessor is to be subject to the like rights in relation to the Deliverables as the Customer.

The Company shall be entitled to recover possession of the Deliverables at any reasonable time and shall be permitted access to the Customer's premises for such purposes.

The Company shall be entitled to require the Deliverables to be stored separately or clearly marked so as to identify them as the Company's property.

The bailment of the goods to the Customer shall create a fiduciary relationship between the Company and the Customer. If in contravention of the prohibition upon selling the Deliverables the Customer effects a sale, the Customer shall account to the Company for the entire sale proceeds in the case of a sale only of the Deliverables; in the case of a sale of the Deliverables with other goods, the Customer shall account for such proportion of the total sale proceeds as fairly represents the proportion of the total proceeds represented by the Deliverables or if higher, the proportion of the sale proceeds equal to the value of the Deliverables

as invoiced to the Customer by the Company including any interest accrued due. The monies so becoming payable to the Company shall not be mixed with the Customer's own monies, but shall be placed in a separate account and forthwith remitted to the Company.

Provided that the Company has not previously repossessed the Deliverables, the property in the Deliverables shall pass to the Customer upon payment for the Deliverables in full including any interest accrued due.

GENERAL LIEN

Without prejudice to other remedies the Company shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days notice to the Customer to dispose of such goods or property as it thinks fit and apply any proceeds towards such debts.

THE COMPANY'S LIABILITY

Nothing in these conditions shall exclude or restrict the Company's liability for death or personal injury resulting from its negligence, liability for fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law. Subject to this and condition 6.4:

The Company's liability in contract, tort, breach of statutory duty or otherwise howsoever arising in respect to this Contract shall be limited to the Job Cost for the particular Deliverables in respect of which the liability arises.

The Company shall have no liability for any failure, delay or defect in the supply or use of the Deliverables resulting from the use of unsuitable materials supplied or specified by the Customer.

In no circumstances whatsoever shall the Company be liable in damages to the Customer for any loss of profit, loss of goodwill, consequential loss, loss of anticipated savings or profits or damage or loss of anticipated profits of any third

party claimed against the Customer.

All warranties, conditions and other terms implied by statute, common law or otherwise are hereby excluded from the Contract to the fullest extent permitted by law.

REJECTION OR CANCELLATION

Unless a rejection fee has been agreed in advance, the Customer shall have no right to terminate the Contract, allege breach of Contract or seek any cancellation, reduction or repayment of the Job Cost on the basis of styles or composition. The Customer may only cancel the Contract with the written agreement of the Company.

The Company shall be entitled without liability to cancel the Contract with the Customer at any time should the Company not be able to obtain a credit reference in respect of the Customer which the Company, in its sole absolute and unfettered discretion, regards as an acceptable credit reference.

Once the Contract is concluded as provided in these conditions, any subsequent cancellation under this condition REF _Ref171943536 \r \h 22 shall be subject to condition REF _Ref171943511 \r \h 25.

PERIODICAL PUBLICATIONS

The Customer may not terminate a request for such materials unless 13 weeks notice in writing is given in the case of periodicals produced monthly or more frequently or 26 weeks notice in writing is given in the case of other periodicals by the Customer. The Company shall be entitled to cancel any request for the printing of periodical publications upon the giving to the Customer of 4 weeks notice in writing. Nevertheless the Company may terminate any such request forthwith should any sum due thereunder remain unpaid.

TERMINATION

Either party may by notice in writing to the other this Contract forthwith (or, in the case of the Company, suspend its performance until such event affecting the Customer shall have been remedied) upon the happening of one or more of the following events:

If the other shall fail to make any payment due under this Contract

within 7 days after the due date; or

If the other shall fail to remedy any other breach capable of remedy within 28 days after being required to do so in writing;

If the other shall be in breach of an obligation which cannot be remedied; or

If the other shall be involved in any of the situations described at conditions REF _Ref171942698 \r \h 10.1.2 to REF _Ref171942713 \r \h 10.1.6 above.

TERMINATION CONSEQUENCES

In the event of termination by the Company pursuant to condition REF _Ref171943565 \r \h 24 or cancellation by the Customer or Company pursuant to condition REF _Ref171943536 \r \h 22, the Company shall be entitled to charge and be paid for all work carried out up to the date of cancellation, to recover payments for all deliveries already made (whether or not such payment is otherwise then due) and the cost of materials and labour already expended for the purpose of future deliveries and also to recover from the Customer either (at the Company's discretion) the sum equivalent to the Company's loss of profit arising out of the cancellation or the cost of media and production time incurred or reserved by the Company at the rate prevailing at the applicable time.

Such termination shall be without prejudice to the parties' accrued rights and liabilities under the Contract.

SUB-CONTRACTING AND ASSIGNMENT

The Company may sub-contract or assign any or all of its rights or obligations under this Contract without the consent of the Customer provided that the Company shall remain liable for the performance of any sub-contractors.

NOTICES

Any notices to be sent under this Contract shall be sent in writing to the other party's registered office and shall be deemed delivered (i) on the day of service if delivered personally during the other's normal working hours, failing which on the next working day (ii) on the next working day if sent by

facsimile transmission (iii) two working days after posting if sent by pre-paid post.

ENTIRE AGREEMENT

This Contract is the entire agreement between the parties on the subject matter contained herein and supersedes all representations, communications and prior agreement between the parties in that regard.

Each party acknowledges that it has entered into this Contract in reliance only on the representations, warranties, promises and terms contained or expressly referred to in this Contract and, save, as expressly set out in these conditions, neither party shall have any liability in respect of any other representation, warranty or promise unless it was made fraudulently.

THIRD PARTY RIGHTS

Unless expressly required in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

LAW

The Contract shall be governed by English law and any disputes arising thereunder shall be dealt with exclusively by the Courts of England save that the Company shall be entitled to bring proceedings against the Customer in the Courts of any other jurisdiction where the Customer resides or carries on business.