



## TERMS & CONDITIONS

### 1. INTERPRETATION

**Acceptance:** the acceptance or deemed acceptance of the Work by you.

**Acceptance Tests:** the tests to be carried out on the Work as set out in the in the Brief.

**Agreement:** the Commercial Terms, these Terms and Conditions, the Special Terms (if any) and the Brief.

**Brief:** the detailed plan describing the Work and setting out the estimated timetable (including Milestones) and responsibilities.

**Business Day:** any day (other than a Saturday or Sunday) when banks are generally open for normal business in London.

**Confidential Information:** all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, in electronic media, orally or by inspection of documents or pursuant to discussions between the parties), where the information is: (i) identified as confidential at the time of disclosure; or (ii) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Materials:** all documents, information and materials including computer programs, data, reports and specifications provided to us by you from time to time for incorporation in the Works.

**Milestones:** a date by which a part of the Work is estimated to be completed, as set out in the Brief.

**Pre-existing Materials:** all Documents, information and materials provided by us relating to the Work which existed prior to the commencement of this Agreement, including computer programs, data, reports and specifications.

**Work:** the work and services as described in the Brief.

**we, us or our:** StudioZumfelde.

**you or your:** the Customer.

Other capitalised terms have the meanings set out in the Commercial Terms. References to including and include(s) mean respectively including without limitation and include(s) without limitation. If there is an inconsistency between any of the provisions of these Terms and Conditions or the Brief, the provisions of the Brief shall prevail.

### 2. COMMENCEMENT AND DURATION

**2.1** By requesting and accepting a quotation or instructing us to commence the Work on your behalf you agree to be bound by our Terms and Conditions.

**2.2** These Terms and Conditions will apply in respect of all Works commissioned now and in the future between us and you.

**2.3** We will provide the Work to you as set out in the Brief or, the date you tell us to start the Work or accept our quotation. The Work under this Agreement shall continue to be supplied until the Work is completed in accordance with the Brief, unless this Agreement is terminated in accordance with clause 13.

### 3. BRIEF

**3.1** The Brief shall be agreed as follows:

**(a)** you will provide us with a request for a Brief, setting out the requirements and specifications of the Work, including a description of what work is to be done, dates by which it is requested to be started and finished and such other information as we may request to

allow us to prepare a draft Brief;

**(b)** we will as soon as reasonably practicable, provide you with a draft Brief; and

**(c)** we shall discuss with you and agree the draft Brief. When it has been agreed, both you and we will sign a copy of it or we may each communicate acceptance of the Brief by email.

**3.2** Where indicated in the Commercial Terms, we will charge the Brief Fee for the preparation of the Brief.

**3.3** Once the Brief has been agreed in accordance with clause 3.1(c) no amendment shall be made to it except in accordance with clause 6.

### 4. OUR OBLIGATIONS

**4.1** We will use reasonable endeavours to:

**(a)** provide the Work in accordance with the Brief; and

**(b)** meet any performance dates or Milestones specified in the Brief.

Any such dates are estimates only and time for performance by us shall not be of the essence of this Agreement.

### 5. YOUR OBLIGATIONS

**5.1** You shall:

**(a)** co-operate with us in all matters relating to the Work;

**(b)** provide, in a timely manner and at no charge, such Material and other information as we may reasonably require, and ensure that it is accurate in all material respects;

**(c)** obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Work and the use of Material in all cases before the date on which the Work is to start; and

**(d)** ensure that all Materials are of the quality required by us to perform our obligations under this Agreement.

**5.2** If our performance of our obligations under this Agreement is prevented or delayed by any failure to fulfil any of your obligations under this Agreement or any act or omission by you or your agents, subcontractors, consultants or employees, we shall not be liable for any costs, charges or losses sustained or incurred by you that arise directly or indirectly from such prevention or delay. Any costs or expenses incurred by us by reason of such delay shall be charged to you and any preferred dates for completion or Milestones shall be extended as may be reasonable and at least for the period of delay as notified by us to you.

**5.3** You may not use the Work that we have created on your behalf for any purpose other than outlined in the Licence. If you do we may terminate this Agreement under clause 13 and you will be liable for full payment under clause 9.5.

### 6. ACCEPTANCE OF WORKS

**6.1** Acceptance of the Work shall occur when the Work has passed the Acceptance Tests.

**6.2** If any failure to pass the Acceptance Tests results from a defect which is caused by your act or omission, or by one of your subcontractors or agents, the Work shall be deemed to have passed the Acceptance Tests notwithstanding such defect.

**6.3** Acceptance of the Work shall be deemed to have taken place upon the occurrence of any of the following events:

**(a)** use by you of any part of Work other than for test purposes; or

**(b)** you unreasonably delay the start of the relevant Acceptance Tests or any retests for a period of ten working days from the date on which we are ready to commence running such Acceptance Tests or retests; or

**(c)** express confirmation by you that the Work is accepted.

### 7. PROJECT MANAGEMENT

**7.1** Your Authorised Person and Our Authorised Person shall meet regularly to discuss matters relating to the Work.

**7.2** Either party will be entitled to call a meeting to discuss matters relating to the Work on 3 Business Days' notice for a telephone meeting or 7 Business Days' notice for a meeting in person (Meeting). Each party will attend a Meeting by a representation with



authority to bind that party. Meetings in person will be held at our offices unless otherwise agreed.

**7.3** The parties will endeavour to respond to the other parties correspondence within the following timescales:

**7.4** If any dispute arises in connection with this Agreement, Our Authorised Person and Your Authorised Person shall, within 21 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

## 8. PROJECT CHANGES

**8.1** If either party wishes to change the scope or execution of the Work, it shall submit details of the requested change to the other in writing.

**8.2** If either of us request a change to the scope or execution of the Work, we will (and if you request it, within a reasonable time) provide a written estimate to you of:

- (a) the likely time required to implement the change;
- (b) any necessary variations to our charges arising from the change;
- (c) the likely effect of the change on the Brief; and
- (d) any other impact of the change on this Agreement.

**8.3** If you want us to make the change, we have no obligation to do so unless and until the necessary variations to our charges, the Work, the relevant Brief and any other relevant terms of this Agreement to take account of the change and this Agreement has been varied.

**8.4** We may, from time to time and without notice, change the Work in order to comply with any applicable statutory requirements. If we request a change to the scope of the Work for any other reason you may not unreasonably withhold, condition or delay consent to it.

**8.5** We may charge for the time we spend assessing a request for change from you on a time and materials basis but we will confirm this with you before work commences.

## 9. TERMS OF PAYMENT

**9.1** The Fees are payable in accordance with the Payment Schedule.

**9.2** Payment is not deemed to have taken place until we receive the amount in cleared funds.

**9.3** You may not withhold or set off any amounts owed to you by us under this Agreement or otherwise against any amounts payable by you to us under this Agreement.

**9.4** In the event that you default on payment, we are entitled (without prejudice to any other right or remedy) to:

- (a) Upon reasonable notice, suspend all further Work or projects that we are carrying out for you under this Agreement or any other agreement until payment has been made in full; and
- (b) charge interest on such sum from the due date for payment at the annual rate of 4% above the base rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made.

**9.5** All sums payable to us (including any interest due) under this Agreement shall become due immediately on its termination.

## 10. INTELLECTUAL PROPERTY RIGHTS

**10.1** All Intellectual Property Rights and all other rights in the Work and the Pre-existing Materials shall be owned by us but licensed to you under the terms of the Licence. If we terminate this Agreement under clause 13 any Licence will automatically terminate except where provided otherwise.

**10.2** You acknowledge that, where we do not own any of the Pre-existing Materials, your use of rights in Pre-existing Materials is conditional on us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle us to license such rights to you. Any additional costs to obtain any such licences (or sub-licences) will be payable by you in accordance with clause 9.

**10.3** All materials, drawings, specifications and data supplied by us to you (including Pre-existing Materials) shall, at all times, remain our exclusive property, and shall not be disposed of or used other than in accordance with the Licence and our written instructions.

**10.4** We may use any Work produced by us for our own publicity.

**10.5** You shall indemnify us against all damages, losses and expenses which we may suffer arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.

**10.6** Nothing in this clause shall restrict or limit a party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

**10.7** The Customer acknowledges that, under this Agreement, we are not providing back-up or business continuity procedures. Accordingly the Customer is entirely responsible for the implementation and operation of its back-up and business continuity procedures.

## 11. LIMITATION OF LIABILITY

**11.1** All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.

**11.2** Nothing in this Agreement limits or excludes our liability:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred you as a result of fraud or fraudulent misrepresentation by us.

**11.3** Subject to clause 11.1 and clause 11.2:

(a) we shall not under any circumstances whatever be liable for:

- (i) any errors in original copy provided by you;
- (ii) any unlicensed Material provided to us by you;
- (iii) any problems with the Work that is beyond our control;
- (iv) any problems or errors caused by any of our subcontractors or agents;
- (v) loss of profits;
- (vi) loss of business;
- (vii) depletion of goodwill and/or similar losses;
- (viii) loss of contract;
- (ix) loss of use;
- (x) loss or corruption of data or information; or
- (xi) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall in all circumstances be limited to the aggregate of the Fees paid by the Customer to us under this Agreement during the 12 months immediately preceding the date on which the claim arose.

## 12. DATA PROTECTION

Each party shall comply with their respective obligations under the Data Protection Act 1998.

## CONTACT METHOD RESPONSE TIME

**Email:** 24 hours from when email received

**Voicemail:** 24 hours from when voicemail left

**Fax:** 2 Business Days from when fax is despatched

**Letter:** 3 Business Days starting 48 hours after posting

## 13. TERMINATION

**13.1** This Agreement shall terminate automatically on completion of the Work in accordance with the Brief.

**13.2** We may terminate this Agreement with immediate effect if:

(a) you commit a breach or repeatedly breach any of the terms of this Agreement and (if such a breach is remediable) you fail to remedy that breach within 5 days of being notified in writing of the breach;

(b) you commit any infringements of our or a third party's Intellectual Property Rights;

(c) you suspend or cease, or threaten to suspend or cease, to carry on all or a substantial part of your business;

(d) (being a company) you are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, (being an individual) you are deemed either unable to pay your debts or have



no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986.

#### **14. NOTICE**

**14.1** Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand, sent by pre-paid first class post or other next working day delivery service to its registered office (if a company) or (in any other case) its principal place of business, or sent by email to the email address set out on the Commercial Terms.

**14.2** This clause 14 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

#### **15. ENTIRE AGREEMENT**

This Agreement and any documents referred to in it or annexed to it constitute the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this Agreement.

#### **16. ASSIGNMENT**

**16.1** You shall not assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

**16.2** We may at any time assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

#### **17. MATTERS BEYOND CONTROL**

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if that delay or failure results from events, circumstances or causes beyond its reasonable control. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations.

#### **18. CONFIDENTIALITY**

**18.1** Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a)** is or becomes publicly known other than through any act or omission of the receiving party;
- (b)** was in the other party's lawful possession before the disclosure;
- (c)** is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

**(d)** is independently developed by the receiving party, which independent development can be shown by written evidence; or

**(e)** is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

**18.2** Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

**18.3** Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

**18.4** Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

**18.5** You acknowledge that details of the Work and the results of any performance tests of the Work, constitute our Confidential Information.

**18.6** We acknowledge that the Materials are your Confidential Information.

**18.7** This clause 18 shall survive termination of this Agreement, however arising.

#### **19. GENERAL**

**19.1** Failure or delay on our behalf to enforce any remedy available to us is not to be construed as a waiver or any of our rights under this Agreement.

**19.2** Each right or remedy available to us under this Agreement is without prejudice to any other right or remedy available.

**19.3** If any provision of this Agreement is found by a competent Court, tribunal or administrative body to be wholly or partially illegal, void, invalid, voidable, unreasonable or unenforceable, that provision shall be severed from the remaining provisions of the Agreement.

**19.4** A person who is not a party to the Agreement shall not have any rights under or in connection with it.

**19.5** Except as set out in these Terms and Conditions, any variation to the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by us.

**19.6** This Agreement and its formation is governed by English law and is subject to the exclusive jurisdiction of the Courts of England and Wales.

**19.7** This Agreement may be executed in any number of counterparts, each of which when executed constituting a duplicate original, but all the counterparts shall together constitute the one agreement.