

TERMS AND CONDITIONS OF BUSINESS

DEFINITION

1. These terms of business apply to any work ("The Work") undertaken by the consultancy ("Smudge"), 8 Steppes Crescent, Martock, Somerset, TA12 6EQ, arising from instructions given by the client ("The Client"). These terms and conditions as set out will apply unless a variation has been subsequently agreed and confirmed in writing signed by an authorized officer of the consultancy and by a duly authorized person on behalf of the Client.

INSTRUCTIONS

2. The Client shall be solely responsible for providing Smudge with all necessary information in connection with its goods the market and generally Smudge shall not be responsible for any shortcomings in such information.

COMPLETION

3. Any date specified for the completion of the work is an estimate; whilst every effort will be made to meet with the date specified this cannot be guaranteed.

PRICES

4.1 The Contract Price shall include the Fees and Bought In Costs as charged or quoted by Smudge.

4.2 Additional charges will be made for any extra work plus costs and expenses entailed in altering or modifying designs or artwork caused by changes amendments or additions to client instructions, poor brief, incorrect copy or any cause beyond our control. Such modifications are charged at normal hourly rates. All Work produced at The Client's request whether experimental or otherwise will be charged.

4.3.1 In addition to fees, The Client shall reimburse Smudge for out of pocket expenses actually and properly incurred in execution of the commission. Such expenses will include hotel and travel expenses, courier & postage, subsistence, etc

4.3.2 Additional charges will be made to The Client for any extra or unplanned meetings required during the execution of the project. Such expenses will include travel time and duration of the meeting and will be charged at the normal hourly rate.

4.4 The Contract Price is not subject to VAT.

4.5 Any Estimate of the whole or any part of the Contract Price is given in good faith and shall be treated as an estimate only and all errors and omissions shall be excepted.

4.6 Any Estimate of Contract Price shall be valid for three months.

4.7 Payment of the Contract Price shall be made in pounds sterling within fourteen days of delivery of invoice and Smudge shall be entitled to change interest on overdue sums after thirty days at the rate of 8% plus the Bank of England's base rate per annum.

STAGES

5.1 Where the Contract is quoted in stages then each such stage shall be an Individual Contract under these conditions payments shall be made on each completed stage before commencement of the next stage if requested by Smudge.

5.2 If requested Smudge shall be entitled to be paid fifty percent of the estimated Contract Price prior to The Work commencing or on completion of each stage if agreed and confirmed in writing signed by an authorized officer of the consultancy and by a duly authorized person on behalf of The Client.

TITLE

6. License to the final product only shall pass to The Client when and only when the full Contract Price for the Product has been paid. Licence will be revoked if the Product is not commercially exploited within two years of the contract date.

INTELLECTUAL PROPERTY RIGHTS

7.1 Smudge agrees to take all reasonable care and precaution to ensure that no design proposed or submitted infringes any existing patent design right registered design or other Intellectual Property Rights of a third party. It does not warrant or give other representation that any such design will not infringe any such right.

7.2.1 Copyright and all Intellectual Property Rights in designs, inventions, concepts, layout, scripts, films, tapes, artwork and display materials or other material produced by Smudge to the Client remain the sole property of Smudge unless and otherwise assigned. The Client shall have the right to use such designs, images and artwork royalty free for the purposes for which they were commissioned once payment has been made, but any unauthorised use shall result in further charges becoming payable by the Client to Smudge. Copyright or Intellectual property rights does not pass to the client on payment of invoice.

7.2.2 Where Smudge has commissioned photography, illustration or other items originated by an outside Creator, the ownership of these items may belong to the Creator and not to Smudge. Therefore copyright will remain with the Creator.

7.3 The Client shall indemnify Smudge from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any defamatory or libellous matter or any infringement or alleged infringement of any patent, trademark, copyright, registered design or design copyright or other exclusive right including any moral right claim or any other title of any third party in respect of any work carried out for The Client by Smudge.

7.4 Without limitation to the rights of Smudge at law, The Client acknowledges and agrees that if, the course of fulfilling the Contract and/or processing or producing materials on behalf of The Client, Smudge discovers or devises any techniques or know how, all rights of every kind in and to such techniques and know how, shall vest absolutely with Smudge.

USE OF WORK

8. Work carried out during the course of the commission shall not be used for any purpose other than that for which it was commissioned nor may any presentation work sketches or artwork of any kind in rough form be used or published as finished work without prior written approval from Smudge.

NO WARRANTY IN RELATION TO PROPOSALS

9. All proposals made by Smudge are in good faith and on the basis of instruction and information put before SMUDGE at the time of preparation. Their suitability or application or effectiveness will depend on The Client, the

Client's staff and sub-contractors of The Client and no proposal is to be taken to warrant achievable or attainable results or performance.

INDEMNITY BY THE CLIENT

10. The Client shall indemnify Smudge in respect of all financial liability (including professional costs damages and accounts of profits) arising out of any claims made against Smudge alleging infringement of any Intellectual Property Rights if such claim arises from the use of information, inventions, ideas, designs, artwork, copy or other material provided by The Client or in respect of all and any claim howsoever arising under the Consumer Protection Act 1987.

CANCELLATION

11.1 The Client may stop the project, in writing, at any time. If The Client terminates the project upon completion of a Stage then they shall pay Smudge the fees and expenses up to the end of that stage. If The Client cancels the project during a Stage The Client agrees to pay, in full, the agreed fee for that Stage and all expenses incurred up to cancellation including any expenses relating to work that may have been commenced but not presented. On cancellation or postponement of the commission or any part of it for any reason Smudge shall retain the copyright even if the fee agreed in advance for the work has included assignment of copyright.

11.2.1 Less than 24 hours prior to, as applicable, the date for commencement of the work or date on which the applicable facilities were to be utilized by or on behalf of The Client, Smudge shall be entitled to charge The Client the full contract price or stage, depending on the Contract agreed.

11.2.2 Less than five working days but no more the 24 hours prior to the Contract Date, Smudge shall be entitled to charge The Client one half of the contract price or stage, depending on the Contract agreed, and recover all costs on which the facilities were to be utilized by or on behalf of the Client.

11.3 In each case reflecting the fact that Smudge is unlikely to be able to secure an order for the facilities that had been allocated to the processing of The Client's Contract from a third party within the time available.

CLAIMS

21.1 The Client must raise any query with regard to invoices with Smudge within 3 days of receipt of the invoice, otherwise the invoice shall be deemed correct and payment will be due within 14 days of the invoice date or in accordance with any other trading terms otherwise agreed in writing.

INFRINGEMENT

13.1 Smudge shall be under no liability to the purchaser for any actions cost claims or demands suffered in respect of any infringement of any patent trademark name registered design device for the protection of Intellectual Property or passing off save insofar as such infringement is due at the default or bad faith of Smudge.

CONFIDENTIALITY

14.1 Smudge will use its best endeavors to preserve the confidentiality of the Client.

IMPLEMENTATION

15.1 Smudge will advise on implementation based upon normal production methods and techniques.

15.2 Proposals for implementation of Smudge designs are based upon the information provided by The Client and no warranty or representation is given concerning performance.

15.3 Smudge is responsible for design but is not responsible for production, full responsibility for which remains with The Client.

15.4 The Client shall indemnify Smudge in respect of any claim howsoever arising under the Consumer Protection Act 1987.

LIMITATION OF LIABILITY

16.1 Smudge will carry out the Work commissioned to a proper professional standard but otherwise it cannot and does not accept any liability for any loss suffered by The Client arising from or out of The Work or any consequent product. Specifically Smudge does not accept responsibility for default by any third party or their sub-contractors, or by any manufacturers or supplier.

ARTWORK & PROOFS

17.1 Smudge prepare and check artwork for reproduction as carefully as possible. However, Smudge does not accept responsibility for any errors caused by The Client, ourselves, or suppliers (for example typesetters, printers etc) once artwork has been passed for print or production. Similarly The Client should furnish us with proofs before publication so that we may check them for accuracy, however, the final responsibility for any errors or omissions remains with The Client.

PUBLICITY AND EXAMPLES

18.1 Smudge shall have the right to publicize its involvement in the Contract.

18.2 The Client shall provide examples of all its products covered by the Contract to Smudge free of charge and Smudge may use them for its publicity.

INTERPRETATION

19.1 In these Conditions and all other Contract Documents between Smudge and The Client references to the singular shall include the plural and vice versa. References to the masculine shall include the Feminine and vice versa and references to the individuals shall include corporations and vice versa.

FORCE MAJEURE

20.1 In the event of the performance of any obligation accepted by Smudge being prevented, delayed or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond Smudge's control, Smudge at its option suspend performance or cancel its obligations under the contract without liability for any damage or consequential loss resulting from, such suspension or cancellation being without prejudice to Smudge's right to recover all sums owing to it in respect of goods delivered and costs incurred up to the date of the suspension or cancellation.

ENGLISH LAW

21.1 This Contract and any other matters concerning the relationship between Smudge and The Client shall be governed by and construed in accordance with English Law and shall be subject to the non-exclusive jurisdiction of the English court.