

## Terms and Conditions

### 1. General

These are the main terms of business of the Agency ("the terms").

<b>"the Agency"</b>	shall mean Shire Marketing Services Limited, trading as Catalyst ("Catalyst") (Registered in England no: 07413227) and any successors or assigns.
<b>"Authorised Representatives"</b>	means in the case of the Agency, any director, and in the case of the Client, any director, partner or sole proprietor.
<b>"the Client"</b>	shall mean any individual, firm, company or other party with whom the Agency contracts or seeks to contract.
<b>"the Contract"</b>	means any agreement for the provision of Services and/or Materials by the Agency to the Client.
<b>"the Quote"</b>	means any quote or revised quote sent to the Client by the Agency on the Agency's headed notepaper or by email detailing, inter alia, the description and price of the Materials and/or Services.
<b>"the Services"</b>	means any contracts for the provision of design consultancy services to the Client of whatsoever nature, including the Materials.
<b>"the Sub Contractor"</b>	shall mean exhibition display organisers, bureaux, printers and other suppliers engaged by the Agency.
<b>"Materials"</b>	shall mean design visuals, disc located digital reproduction/artwork, films, display material, printed items, digital media and all matter analogous to the above.

### 2. Costs

- 2.1 The Client has 30 days within which to accept the Quote from the Agency to provide the Services in accordance with these terms. For the avoidance of doubt, the current costs for any Contract shall be the costs indicated on the latest Quote (by date).
- 2.2 The Client shall pay the Agency for the Services and the Materials such sums at such times as specified in the Quote, which shall include any revised charges for changes to the Contract.
- 2.3 Quotes are based on the client's current costs of production and, unless otherwise agreed, the Agency reserves the right to amend on or at any time after acceptance of a Quote on giving notice to meet any rise or all in such costs which is due to any factor beyond the Agency's control.
- 2.4 Where a Sub Contractor is employed by the Agency, the Agency shall get a Quote from the Sub Contractor and seek the client's approval to the Sub Contractor's fees.
- 2.5 Time for payment for the Services and/or the Materials shall be of the essence.
- 2.6 The Client shall be deemed to have authorised the Agency to purchase all Materials once any Quote is accepted.
- 2.7 Except as otherwise agreed between the parties, the Materials and/or Services are accepted by the Client on the basis that the price quoted is ex works and is exclusive of any value added tax, special packing materials, carrier charges, delivery, insurance or customs duties, which costs shall be borne directly by the Client.

### 3. Tax

The Agency reserves the right to charge the amount of any Value Added Tax payable whether or not included on the Quote or invoice.

### 4. Copyright

Where works of advertising, photography, artwork or design has been commissioned, the parties agree that copyright and design rights in all work carried out are retained by the Agency. Where any such material has been supplied to the Client for its use the parties agree it shall only be used for the purposes authorised by the Agency. Once the Agency has received payment in cleared funds, the Client shall have the non-exclusive right to use, reproduce and publish the work carried out by the Agency for the authorised purposes.

### 5. Client's property

- 5.1 Except in the case of a client who is not contracting in the course of a business or holding himself out as doing so Client's property and all property supplied to the Agency by or on behalf of the Client shall while it is in the possession of the Agency or in transit to or from the Client be deemed to be at the Client's risk unless otherwise agreed and the Client should insure its property accordingly.
- 5.2 The Agency shall be entitled to make a reasonable charge for the storage of any Client's property left with the Agency before receipt of the order or after notification to the Client of completion of the work.

### 6. Variations

Variations to these Terms shall only be permissible if agreed in writing by Authorised Representatives of the parties.

### 7. Illegal matter

- 7.1 The Agency shall be under no obligation to print any matter which in its opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.
- 7.2 The Agency shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any libellous material supplied by the Client or any infringement of copyright, patent, design, trade mark or service mark, rights in get up or of any other proprietary or personal rights of any description contained in any material printed for the Client. The indemnity shall extend to any amounts paid in respect of legal costs in settlement of any claim.

### 8. Liability

- 8.1 Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the Agency and the carrier within three clear days of delivery (or, in the case of non-delivery, within 28 days of dispatch of the goods) and any claim in respect thereof must be made in writing to the Agency and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 42 days of dispatch). All other claims must be made in writing to the Agency within 28 days of delivery. The Agency shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Client proves that
  - (i) it was not possible to comply with the requirements and
  - (ii) advice (where required) was given and the claim made as soon as reasonably possible.
- 8.2 The Agency shall not be liable for any claim or claims for direct or indirect consequential or incidental injury, loss or damage (other than for death or personal injury as a result of the Agency's negligence) made by the Client against the Agency (whether in contract or in tort including negligence on the part of the Agency, its servants or agents) arising out of or in connection with the Services or the Materials or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Contract or a breach of a fundamental term thereof) of the Agency, its servants or agents in the performance of the Contract.

Catalyst is a trading style of Shire Marketing Services Limited

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- 8.3 Without prejudice to the generality of the foregoing nothing herein contained shall operate to exclude or restrict liability for breach of any obligation arising from the Supply of Goods and Services Act 1982 as against the Client if he is dealing as a consumer as defined by Section 12 of the Unfair Contract Terms Act 1977.
- 8.4 The Agency makes no representations as to the benefit of the Client arising out of the provision of the Services and there is neither expressed nor shall there be implied into the Contract any conditions or warranties as to the same.

## 9. Client obligations

The Client undertakes to do the following:

- 9.1 Give clear and precise instructions and in respect of matters important to the Client, these must be confirmed in writing.
- 9.2 To pay in full, within 30 days of invoice date, each and every invoice or as otherwise detailed in any Quote; in default, the Agency reserves the right to charge interest from the invoice date at the rate of four per cent both before and after judgment.
- 9.3 Any variation of cancellation of the Agreement by the Client shall give the Agency the right to recover losses flowing therefrom on a full indemnity basis.
- 9.4 The Client is to adhere to any agreed interim or stage payment billing and payment agreement as agreed between the parties from time to time.

## 10. Proofs

- 10.1 Proofs of all work may be submitted for Client's approval and the Agency shall incur no liability for any errors not corrected by the Client in proofs so submitted. The Client's alterations and additional proofs necessitated thereby shall be charged at an extra cost.
- 10.2 When style, type or layout is left to the Agency's judgment, any changes made by the Client shall be charged as extra items and shall be invoiced to the Client at the Agency's then current hourly rate.
- 10.3 If the Client fails to notify the Agency of any amendments, the Client shall be deemed to have checked and accepted the proof and the Agency shall have no liability in respect of claims, charges or variations subsequently necessitated.

## 11. Standard terms

The Agency will use reasonable endeavours to comply with the aims, objectives and codes of conduct of relevant professional bodies of which either the Agency or individual members of the Agency are affiliated to or members of provided from time to time and in the event of a conflict between those and these Terms, then these Terms shall prevail.

## 12. Delivery and payment

- 12.1 Delivery of work shall be accepted when tendered.
- 12.2 Should expedited delivery be agreed an extra charge may be made to the Client to cover any overtime or any other additional costs involved.
- 12.3 Should work be suspended at the request of or delayed through any default of the Client for a period of 30 days the Agency shall immediately upon the expiry of the 30 day period be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.
- 12.4 The Client will either pay each invoice in full in cash or cleared funds within 30 days from the date of such invoice or on terms detailed in any relevant Quote, failing which the Agency shall be entitled to cease all further work on behalf of the Client without liability in respect of any loss or damage sustained by the Client as a result.
- 12.5 Notwithstanding the Agency's liability to cease any further work in accordance with clause 12.5 of these Terms, the Client shall not in any respect be released from its obligations to the Agency under any Contract.
- 12.6 Where the projects consist of multiple deliverables, unless otherwise stated in the Quote, the purchase price shall be payable to the Agency as follows:
- 12.6.1 50% non-refundable deposit payable on receipt of the order acknowledgement; and
  - 12.6.2 25% upon the approval of the initial concept document
  - 12.6.3 25% upon final completion/delivery/sign off.

## 13. Cancellation

- 13.1 The contract may not be cancelled following order acceptance unless a trial or rejection period has been agreed in advance. At the sole discretion of the Agency, a contract may be cancelled either wholly or in part subject to timing, and only once agreement in writing has been notified to the Client.
- 13.2 For retained work billed monthly and where no contract period has been explicitly stated on the Quote, the contract may be terminated by the Client giving 3 months' notice in writing.
- 13.3 Unless otherwise stated in the Quote, the contract may not be cancelled except by agreement in writing of both parties and upon payment to the Agency of such amount as may be necessary to meet the costs incurred by the Agency up to the date of cancellation and to indemnify the Agency against all loss resulting from the said cancellation.
- 13.4 The Client shall have no right to seek any cancellation or repayment of job costs on the basis of style or composition. Any changes or amendments to the signed Quote will not be agreed without discussion and mutual consent.
- 13.5 The Agency shall not be liable for any loss, damage or delay which arises as a result of the termination of the contract between the Agency and the Client, or for compliance with relevant statutory or regulatory requirements.

## 14. Quotes

All prices quoted are dependant upon sight of relevant instructions, brief, copy, images, artwork and other such materials.

## 15. Risk

Risk in the Materials shall pass to the Client on delivery.

## 16. Property

- 16.1 Notwithstanding delivery of the Goods (or of any documents representing the Goods) the property in the Goods shall remain with the Agency until the Client has paid the Agency in full in cash or cleared funds and the Client shall hold such Goods in a fiduciary capacity as the Agency's bailee until such payment has been made in accordance with Clause 12 above.
- 16.2 Until property in the Goods has passed to the Client in accordance with clause 16.1 above and without prejudice to the Agency's other rights:
- 16.2.1 The Client shall (unless otherwise agreed by the Agency in writing) take all reasonable steps to ensure that all Goods which are in the possession or control of the Client or the Client's agents or customer are kept fully insured and labelled or otherwise marked and kept apart from all other goods so that they may be readily identified and separated from other goods of the Client and third parties.
  - 16.2.2 The Agency shall have the right to require the Client to deliver up the Goods and if the Client fails to do so to re-possess the Goods and for that purpose to go upon any premises of the Client or any third party where the Goods are stored.
  - 16.2.3 The Agency may maintain an action for the price of the Goods.

## 17. Compliance and Intellectual Property Rights

- 17.1 It is the responsibility of the Client to ensure that the Materials comply with all laws, regulations and codes in all countries where the Materials are used. The Client agrees to indemnify the Agency against any costs arising from the use or misuse of the Materials.

- 17.2 Third party materials, such as imagery, used in the Materials may be subject to usage liabilities such as royalties and licence fees. The Agency shall procure such licences as necessary for the use of third party materials for use within the scope of the Quote. The Client should obtain written consent from the Agency for use of any part of the deliverables outside of the scope of the Quote.
- 17.3 Unless otherwise stated in the Quote, the Agency reserves the continuing right to use any deliverables it produces for the promotion of its services.

## 18. Variations in quantity

Every endeavour will be made to deliver the correct quantity ordered, but Quotes are conditional upon margins of five per cent for work in one colour only and 10 per cent for other work being allowed for overs or shortage (4 per cent and 8 per cent respectively for quantities over 50,000) the same to be charged or deducted.

## 19. Delay

- 19.1 If a timetable is agreed between the parties, the Agency will only be expected to comply with the deadlines if the Client does likewise and in as much as the Client has not delayed or altered the brief in any way.
- 19.2 The Agency will use reasonable endeavours to comply with any date or dates for the supply of the Services and/or the Materials, save that unless the Contract otherwise expressly provides, such date or dates shall constitute only statements of expectation and shall not be binding. Accordingly, the time of the supply of the Services or the Materials shall not be of the essence of the Contract and if the Agency fails to supply the Services or the Materials by any specified date, such failure shall not constitute a breach of the Contract and the Client shall not be entitled to treat the Contract as thereby repudiated or to rescind it or any related contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.
- 19.3 If the Agency shall be prevented or hindered from supplying the Services and/ or the Materials or any part thereof by any circumstances beyond its reasonable control (Force Majeure) for any Materials and/or Services deliverable (within the United Kingdom, by close of business on the fiftieth day from the date of acceptance of the Contract and for any Materials and/or Services deliverable outside the United Kingdom, by close of business on the one hundredth day from the date of acceptance of the Contract), performance of the Contract shall be suspended for so long as the Agency is so prevented or hindered PROVIDED THAT if the performance of the Contract shall be suspended for more than one hundred and fifty days the Agency shall be entitled by notice in writing to the Client forthwith to terminate the Contract or cancel any outstanding part thereof and in such circumstances the Client shall pay at the rates specified above for all the Services and/or the Materials supplied and materials used by the Agency to the actual date of such termination and the Agency shall not have any liability to the Client for any direct or consequential loss or damage suffered by the Client as a result of the Agency's inability to perform its obligations under the Contract in the circumstances mentioned above.
- 19.4 For the purposes of clause 20.3, Force Majeure shall mean fires, strikes, insurrection or riots, embargoes, or delays in transportation, inability to obtain supplies and raw materials or any other circumstances of any kind whatsoever beyond the reasonable control of the Agency which results in the party being in breach of its obligations under this Agreement.

## 20. Lien

Without prejudice to any other remedies which the Agency may have, the Agency shall in respect of all debts due and payable by the Client to the Agency have a general lien on all goods and property belonging to the Client in its possession and shall be entitled upon the expiration of fourteen days' notice to the Client to dispose of such goods or property as it thinks fit and to apply any proceeds of sale thereof to the payment of such debts.

## 21. Non-assignment

The Client may only assign any claims and obligations under these terms of business to third parties after having obtained the prior written approval of the Agency.

## 22. Waiver

Any waiver of any breach of these Terms shall not prejudice the Agency's rights in respect of any subsequent breach.

## 23. Dispute resolution

All disputes, differences or questions arising out of these terms of business or as to the rights and liabilities of the parties hereto or as to the construction or interpretation hereof shall be referred to the decision of a single arbitrator to be agreed between the parties or in default of agreement to be appointed at the request of either party by the President for the time being of the Chartered Institute of Arbitrators. The arbitrator shall act as an expert whose decision (including as to costs) shall, except in the case of manifest error, be final and binding on the parties.

## 24. Notices

Any notices required to be given to the Client or to the Agency must be given in writing and delivered by hand, by mail, by telex, by facsimile with mail confirmation, at the addresses set out in the main contract (or such other addresses as shall have been notified to the other party in writing). If hand delivered, notices are deemed served upon the day following delivery. If sent by first class mail, notices are deemed served on the second day following posting. If sent by telex, notices are deemed served upon receipt of the sender's answerback. If sent by facsimile, notices are deemed served upon receipt of the sender's confirmation provided that such facsimile notice is followed by confirmation by first class mail.

## 25. Severability

If any part of these terms of business shall be found by any court to be invalid, the invalidity should not affect the remaining conditions and the parties shall attempt to substitute therefore invalid condition having as near the same effect as the invalid condition as shall be legally permissible.

## 26. Entire agreement

The Client agrees that he will have no remedy in respect of any untrue statement made to him upon which he relied in entering into these terms of business and that his only remedies will be for breach of contract. The Client irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation, whether or not contained in these terms of business, or breach of any warranty not contained in this agreement (unless such misrepresentational warranty was made fraudulently) and/or to rescind these terms of business.

## 27. Insolvency

If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding-up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, the Agency without prejudice to other remedies shall have the right not to proceed further with the contract or any other work for the customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the customer, such charge to be an immediate debt due to him.

## 28. Law

These conditions and all other express terms of the contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with the Laws of England. These Terms do not affect your statutory rights.

## 29. Third party suppliers

The Agency shall not be liable in respect of any act or omission of any third party and any agreement made between the Client and any third party shall be a contract between the Client and the third party and the Agency shall not be a party to that contract, even if the Agency introduced the Client and the Third Party.

## 30. Websites

- 30.1 The Agency does not have control over the content of the Client's website and shall not be liable in relation to any action made relating to inaccurate or incorrect information and shall not be liable in relation to any other action brought in relation to the content of the website.
- 30.2 Any dispute between the Client and the Party hosting the website will be dealt with in accordance with Clause 29 above.

- 30.3 Hosting invoices are due as per our standard terms. Failure to pay a hosting invoice may result in termination of the hosting service. This will result in the website being unavailable until the overdue invoice is paid in full. On receipt of full and cleared funds, the website hosting will be re-instated. This can take a further 24-48 hours to go live.

## **31. Data**

- 31.1 For the purposes of the Data Protection Act 1998, the Client shall be the data controller and the Agency is the data processor in respect of any Personal Data as defined in that Act.
- 31.2 The Agency shall process the Personal Data only in accordance with the Client's instructions from time to time and shall not process the Personal Data for any purpose other than those expressly authorised by the Client.
- 31.3 The Agency warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of or damage to Personal Data to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and the nature of the data to be protected and
  - (b) take reasonable steps to ensure compliance with those measures.
- 31.4 The Agency is reliant on the Client for direction as to the extent to which the Agency is entitled to use and process the Personal Data. Consequently, the Agency will not be liable for any claim brought by a data subject arising from any action or omission by the Agency, to the extent that such action or omission resulted directly from the Client's instructions.
- 31.5 The Client shall be responsible for obtaining all consents from data subjects to the use of Personal Data in connection with the Services and shall process any Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 31.6 The Agency will receive all marketing Data in good faith and the Client assures the Agency that any and all Data supplied by the Client is in accordance with current regulations and that the Client is fully permitted to hold and contact that Data. Furthermore, that the Agency is expressly permitted to act as an Agent to the Client and hold the Data for the express use of that Client and to contact that Data on behalf of the Client via Agency systems and software as prescribed by the marketing campaign or Quote issued.