

## Terms and Conditions

I agreed to the terms and conditions in this document

Client Signature

.....

Print Name

.....

For and behalf of

.....

Date

.....

Last Revision: 12th January 2014

**1. Services Offered.**

1.1 Fluid Creative Media Ltd (the Company) undertakes and/or organises all design and production work (copywriting, artwork, web design, web construction, illustration, photography, 3D prototyping, CD Rom production, printing, etc.) for any work in the field of packaging, corporate identity, digital, literature, general publicity, new media, advertising and brand strategy.

**2. The Project.**

2.1 The commission and design brief shall be confirmed in writing before proceeding; the services and fees being stated, together with an estimate of cost for the various stages.

**3. Confidentiality.**

3.1 The Company undertakes not to disclose any confidential information obtained from the Client concerning the business methods, know-how and affairs of the Client without the Client's prior approval. The Company shall ensure that its staff and any sub-contractor involved in the commission shall be bound by the same conditions of confidentiality.

**4. Conditions.**

4.1 Unless there is express written agreement to the contrary, all Clients' orders (whether written or verbal) are accepted on the following conditions. Fluid Creative Media also reserves the right to update these conditions from time to time without prior notice.

**5. Payment for Services.**

5.1 Services are charged to Clients at commercial rates, calculated on an hourly basis plus materials used.

**6. Expenses.**

6.1 In addition to fees and suppliers' costs, the Company shall be reimbursed for all reasonable out-of-pocket expenses (whether by the Company or by any other person engaged on the commission) actually and properly incurred in the execution of the commission. Such expenses will be agreed with the Client in advance and will include without limitation hotel, subsistence and traveling expenses, use of car, long-distance telephone calls, courier services, proofs, prints and mock-ups, photography props, stock photography etc.

**7. Supplies from Third Parties.**

7.1 Where a supplier (e.g. printer, photographer, advertising medium, etc.) accepts an order to supply the Company on the basis of terms and conditions either written or customary within the trade, those terms and conditions shall also apply between the Company and the Client on whose behalf those supplies are required.

7.2 Where the client commissions a third party supplier (e.g. printer, photographer, advertising medium, etc.), the Company can take no responsibility for the quality or accuracy of the production provided by the supplier. The Company can also take no responsibility for any losses or costs incurred by either the third party supplier or the client in connection to the products/services the supplier has provided.

**8. Indemnity.**

8.1 Whilst the Company will give guidance regarding statutory and voluntary controls relevant to the promotion of its Clients' products or services, it can accept no responsibility for such guidance or breach of these. Final responsibility lies with the Client (e.g. for compliance and accuracy of all statements and claims made) and the Client indemnifies the Company against any liabilities arising.

8.2 The Company will take all reasonable steps to ensure that all work undertaken and all information received will remain in strict confidence. In the event of it being proved that the Company has breached any confidentiality that is bound by agreement or implied, the Client indemnifies the Company against any liabilities arising.

8.3 It is the responsibility of the Client to check and approve all design, copy, artwork, photographs, illustrations or other material prior to printing, publication or issue, provided that the Client can be reasonably expected to have sufficient knowledge of that material to enable check to be made. The Company shall not be liable for any error or omission made prior to such check, once the Client's approval has been given.

8.4 The Client will be liable for and will indemnify the Company against all actions, costs and claims arising out of any infringement of industrial property rights, including copyright, patents and registered designs, arising from the implementation of work carried out by the Company for the Client.

8.5 The Client is responsible for ensuring that the work complies with the laws of the country for which it is intended.

#### **9. Liability.**

9.1 Any claim by the client which is based on any defect in the quality or condition of any goods supplied by the Company or the failure of such goods to correspond with specification shall (whether or not delivery is refused by the Client) be notified to the Company within seven days from the date of delivery. If delivery is not refused and the Client does not notify the Company accordingly, the Client shall not be entitled to reject the goods, the Company shall be under no liability in respect of such defect or failure and the Client shall be bound to pay the price as if the goods had been delivered in accordance with the relevant contract.

9.2 Where any valid claim in respect of any defect in the quality or condition of goods or their failure to meet specification is notified to the Company in accordance with paragraph 1 of this condition, the Company shall be entitled to replace the goods (or such of them as are defective) free of charge or, at the Company's sole discretion, refund to the Client the price of the goods (or any appropriate proportion of such price), but the Company shall have no further liability to the Client in respect of such defect or failure.

#### **10. Payment of Accounts.**

10.1 All accounts are due for payment on or before the 28th day after date of invoice, unless a prior date is stipulated. VAT is charged at the appropriate rate.

10.2 Non-payment or late payment may result in refusal and or withdrawal of services without prior notice. The client will also be responsible for any additional charges incurred by the company whilst pursuing payment.

10.3 The company reserve the right to charge interest at 8% on outstanding invoices after 28 days from the date on the invoice.

#### **11. Intellectual Property.**

11.1 All intellectual property rights ("IPRs") in any materials used in or created in connection with or for the client's commission by the Company or at its instruction (including without limitation all drawings, designs, illustrations, sketches, models, reports, specifications, calculations, transcripts, books, records, papers, notes, notebooks, memoranda, journals, diaries, outlines, drafts, letters, photographs, films, negatives, tape recordings, music, soundtracks, video recordings, CAD materials, software, interactive CDs, CD-Roms, laser discs, other optical, electronic or magnetic recordings, software and all other materials of a like nature) ("the materials") shall be owned legally and beneficially by the Company until full payment has been received for the commission. After the company receives full payment for the commission the Client shall thereafter become the legal owner, with the exception of the source code for the IGNITE CMS system where the Intellectual Property will remain with the Company. In addition Fluid Creative Media Ltd retain the right the re-use any materials or intellectual property for future productions without consent.

#### **12. Physical Materials.**

12.1 All physical materials purchased or produced in pursuance of the Client's business upon payment in full for such material will become the Client's property exclusively.

**13. Publication by the Company.**

13.1 Unless specifically notified by the Client, the Company may without the consent of the Client publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Client's commission and for this purpose the Client shall allow the Company access to the Client's commission, during and after completion of the Client's commission.

**14. Registration.**

14.1 If any intellectual property rights arising in respect of the commissioned work are acquired from the Company by the Client, the Company shall, where reasonably requested, assist in any application for registration of any such rights. Any costs incurred by the Company shall be paid by the Client.

**15. Client's Property.**

15.1 Although the Company will take every precaution to safeguard the Client's property entrusted to its custody, the Company will not be held responsible for loss, damage or unauthorised use of such property unless negligence by the Company is proved. In such instance the Company's liability will be limited to the replacement or repair of such property.

**16. Termination of Agreement.**

16.1 Any agreement between the Company and the Client shall terminate (a) if either party commits a breach of it and fails to remedy the breach within fourteen days after receiving notification in writing from the other party specifying the breach and requiring its remedy (b) if the other party commits any act of bankruptcy or commences any proceedings for winding up (other than for the purpose of amalgamation or reconstruction) or if any Administrator, Receiver or Liquidator is appointed for the whole or any part of the business of such party.

**17. Consequences of Termination.**

17.1 On termination or postponement of the commission or any part of it, for any reason, the Company shall be entitled to full remuneration for the work completed to the date of termination or postponement, together with all costs and expenses.

**18. Force Majeure**

18.1 Neither the Company nor any of its employees, agents or sub-contractors shall be under any liability whatsoever to the Client for non-performance, part-performance, defective performance or delay in performance of any contract between the Company and the Client, or the provision of any work or services thereunder, resulting directly or indirectly from any cause beyond the reasonable control of the Company, including strikes, lockouts, riots, acts of war, fire, explosion, storm, flood, earthquake, failure of power supplies or transport facilities or actions or regulations of any government or local authority. If the method or mode of performance contemplated or anticipated by the Company is affected by force majeure the Company shall be under no obligation to perform any contract with the Client in any other way or by any other method, but may rely on the provision of this condition to exempt it from liability, or may perform such contract in which event the additional expenses of performance shall be payable by the Client.

**19. Technical support on web services**

19.1 The company supports any software commissioned by the client for 60 days, after this time any remedial work undertaken by the company is chargeable to the client.

19.2 The company complies with W3C standards for web site construction and all sites are validated before launch. The company takes no responsibility for future software updates which may conflict or alter the web site and any remedial work undertaken by the company is chargeable to the client.

**20. Data Safeguarding Responsibilities**

20.1 The Company will take all reasonable action to safeguard the Client data within the web application within the scope by compliance with the OWASP guide to securing web applications. However, the responsibility of the data integrity lies

solely with the Client, and the Company can not be held responsible for loses, mis-use or action resulting from a data breach.

20.2 Forms and data gathering functionality held on the Client site should comply with GDPR legislation and this compliance is the responsibility of the Client. Furthermore, after the 60 day support period and without a pre-agreed support agreement, the Company will not accept responsibility of the processor or the controller for any data collected by the web site. The Client will accept responsibility for the controller and processor of all data held within the web site database.

20.3 Where a pre-existing agency support agreement is in place, the Company will:

1. Upon Client request remove or return any personal or sensitive data held with the database
2. Encrypt any data before data is transferred from the Company
3. Limit access to the Client data within the Company staff to a minimum.
4. Store all Client data on the remote ISP server and ensure suitable remote backups are taken within the scope.
5. Not store the Client data on local hard drives or portable storage devices.
6. Ensure the Client can access and manage their data.
7. Encrypt any user passwords stored in the database