

HANGAR SEVEN LIMITED

TERMS AND CONDITIONS OF BUSINESS

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Company: Hangar Seven Limited registered in England and Wales with company number 06293681.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract: the contract between the Company and the Customer for the supply of Services to consist of these Conditions, the Specification, and the Order unless otherwise specified by the Company from time to time in writing.

Customer: the person or firm who purchases Services from the Company.

Customer Materials: all materials provided to the Company by the Customer during the course of the Company's provision of the Services including but not limited to all images, text and other materials utilised by the Company.

Deliverables: the deliverables as set out in the Specification and as produced by the Company for the Customer but excluding any materials belonging to the Company or any third parties, including in particular any such materials created prior to the date of the Order or which the Company otherwise specifies to the Customer as not forming part of the deliverables, or which are not expressly described as forming part of the deliverables.

Delivery Date: the date that the final Deliverables are provided to the Customer by the Company as stated in writing in the Specification, or as otherwise notified to the Customer by the Company in writing.

Intellectual Property Rights: all vested contingent and future intellectual property rights including but not limited to 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 design right, 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.

Order: the Customer's order for Services pursuant to the Specification as set out in the Customer's purchase order (or such other medium as is acceptable to the Company and notified to the Customer from time to time) including written acceptance of the Company's quotation for the Services as detailed in the Specification or as otherwise notified to the Customer by the Company.

Services: the production services, including the Deliverables, supplied by the Company to the Customer as set out in the Specification.

Specification: the description or specification of the Services provided in writing by the Company to the Customer as amended from time to time by the Company giving notice to the Customer in writing.

1.2 Construction

In these Conditions, the following rules apply:

- a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a reference to a party includes its personal representatives, successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

The Order shall be deemed to be accepted when the Company starts work on the Customer's instruction (howsoever given or implied), at which point and on which date the Contract shall come into existence (**Commencement Date**).

The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

Any samples, drawings, descriptive matter or advertising issued by the Company, and/or descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

Any quotation given by the Company whether in the Specification or otherwise shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.

The Company shall use reasonable endeavours to meet any performance dates specified in the Specification or the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

If the Company's performance of any of its obligations under the Contract is prevented or delayed by any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.

The Company warrants to the Customer that the Services will be provided using reasonable care and skill.

4. CUSTOMER'S OBLIGATIONS

The Customer shall:

- ensure that the terms of the Order are complete and accurate;
- co-operate with the Company in all matters relating to the Services;
- provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company;
- provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start, and the Customer should refer to the website www.dacs.org.uk for advice and guidance;
- undertake a reasonable inspection of the Deliverables upon receipt and promptly notify the Company of any errors in the Deliverables prior to accepting them.

If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

5. CHARGES AND PAYMENT

The Charges for the Services shall be on a time and materials basis unless otherwise notified to the Customer by the Company; and

- the Charges shall be calculated in accordance with the Company's standard fee rates, and will be set out in the Specification and/or any other medium through which the Company notifies the Customer in writing; and
- for the avoidance of doubt, the Company reserves the right to fix the prices for the provision of the Services; and
- the Company shall be entitled to charge an overtime rate as a percentage of the standard fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside regular working hours; and
- the Company shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Company engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Company for the performance of the Services, and for the cost of any materials.

The Company reserves the right to increase its standard fee rates at any time. The Company will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If an increase is not acceptable to the Customer, it shall notify the Company in writing within 1 week of the date of the Company's notice and the Company shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer.

The Company may invoice the Customer on completion of the Services or at intervals throughout the provision of the Services at its option provided that the Company gives notice to the Customer as to the desired invoicing procedure in writing in the Specification or otherwise.

The Customer shall pay each invoice submitted by the Company:

- within 30 days of the date of the invoice; and
- in full and in cash unless the Customer has a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.

Where applicable and relevant, all amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the due date for payment (**Due Date**), the Company shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Customer to the Company.

6. INTELLECTUAL PROPERTY RIGHTS

Save as set out in clause 6.4 below, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company unless otherwise expressly stated in this Agreement.

The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer for the relevant license fee.

Pursuant to and for the consideration set out in the Order, the Company (in so far as it is able) hereby assigns to the Customer all its rights, title and interest in and to the Deliverables to include (but not be limited to) the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement of any other class of action relating to ownership, of any of the Deliverables whether occurring before, on, or after the Delivery Date.

Subject to the assignment set out in clause 6.4 above, the Customer hereby grants to the Company a royalty-free, irrevocable and perpetual non-exclusive licence to use the Deliverables for business promotion and marketing activities and such other purposes as the parties agree from time to time.

For the avoidance of doubt, the Customer acknowledges that all trade marks and associated branding of the Company (including but not limited to logos) belong to the Company, and the Customer has no rights (unless expressly authorised in writing by the Company) to use, apply or alter any such trade marks and associated branding of the Company.

All Intellectual Property Rights and all other rights in the Customer Materials shall be owned by the Customer. The Customer hereby licenses all such rights to the Company free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Company to provide the Services as is envisaged by the parties.

7. TITLE AND RISK

Risk in the Deliverables shall pass to the Customer on the Delivery Date.

Title in the Deliverables shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:

- the Deliverables; and
- all other sums which are or which become due to the Company from the Customer in respect of the Company's provision of the Services.

Until title in the Deliverables has passed to the Customer, the Customer shall:

- hold such Deliverables on a fiduciary basis as the Company's bailee; and
- store such Deliverables separately from all other similar products held by the Customer so that they remain readily identifiable as the Company's property.

8. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and all other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 8 shall survive termination of the Contract.

9. LIMITATION OF LIABILITY

Nothing in these Conditions shall limit or exclude the Company's liability for:

- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- fraud or fraudulent misrepresentation; or
- breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

Subject to clause 9.1:

- the Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the Charges for the relevant Order, with regard to which the Customer is claiming loss.

Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. This clause 9 shall survive termination of the Contract.

10. TERMINATION

The Company may terminate the Contract if it reasonably believes that any Customer Materials supplied to it infringe the Intellectual Property Rights of a third party, or the performance by the Company of an Order would be reasonably likely to result in such an infringement.

Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach;
- the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits liability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- the other party commences negotiations with all or any class of its creditors with a view to rescinding any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for the solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- the other party (being an individual) is the subject of a bankruptcy petition or order;
- a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

if a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

if a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2 to clause 10.2 (i) (inclusive);

the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

The Company may terminate this Contract by written notice without payment of any amount or penalty if there is a change of control of the Customer to which the Company reasonably objects, provided that the Company gives written notice within one month of the date on which the Customer informs the Company (by written notice) of the change of control or on which the Company otherwise becomes aware of the change of control.

Without limiting its other rights or remedies, the Company shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 10.2 to clause 10.2 (i), or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

11. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- the Customer shall return any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. DATA PROTECTION

Within this Clause, "Data Protection Act" means the Data Protection Act 1998 and "Data Controller", "Data Processor" and "Personal Data" have the same meanings as in that Act.

With respect to the parties' rights and obligations under these Conditions, each party shall be the Data Controller for information that it obtains in the course of carrying out its business as permitted under these Conditions. To the extent that the Customer needs access to Personal Data relating to its receipt of the Services, then the Company shall be the Data Controller and the Customer shall be the Data Processor in respect of such Personal Data.

The Customer shall (and shall ensure that its contractors do so) shall ensure that it shall only process Personal Data relating to its receipt of the Services in accordance with instructions from the Company (which may be specific instructions or instructions of a general nature as set out in these Conditions or as otherwise notified by the Company to the Customer during the term of the Contract);

only process Personal Data to the extent, and in such manner, as is necessary for the provision of the Services and/or its obligations under these Conditions or as is required by law or any regulatory body;

implement appropriate technical and organisational measures to protect Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from unauthorised or unlawful processing or accidental loss, destruction or damage to Personal Data and to the nature of the Personal Data which is to be protected; and

not perform its obligations under the Contract in such a way as to cause the Company to breach any of its applicable obligations under the Data Protection Act.

13. TUPE

If the Transfer of Undertakings (Protection of Employment) Regulations 2006 Regulations apply by reason of the Customer ceasing itself to undertake services similar to the Services (or reducing its own provision of such services) and, as a result, any employees of the Customer are transferred from the Customer to the Company, then the Customer shall indemnify the Company against all costs, claims, demands, awards, damages, liabilities and expenses arising against the Company by or on behalf of such transferees (including, without limitation, any such costs, claims, demands, awards, damages, liabilities and expenses arising on the termination by the Company of the employment of any employee transferring to it in such circumstances).

14. GENERAL

Force majeure:

- For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of the Company or its subcontractors.
- The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- If the Force Majeure Event prevents the Company from providing any of the Services for more than 3 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

Assignment and subcontracting:

- The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

Notices:

- any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- This clause 14.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

Waiver:

- A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

Severance:

- If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

No partnership:

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, to bind, the other party in any way.

Third parties:

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

Variation:

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

Non-Solicitation:

The Customer shall not, without the prior written consent of the Company, at any time from the date of the Contract to the expiry of 12 months after the Delivery Date, solicit or entice away from the Company, employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.

Governing law and jurisdiction:

This 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 by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.