

## STANDARD TERMS AND CONDITIONS OF SALE

1. McCann Erickson Central Ltd, (the Agency) agrees to the delivery of goods and the provision of services as set out in Schedule 1 subject to these terms and conditions ("the Agreement"). Any signed client agreement will have priority over any clauses in these terms. In the event that a specific agreement is signed by the Client it shall prevail in the case of any discrepancies over any clauses in these terms.
2. The term of this Agreement is two years from the date hereof, the "Initial Term", and thereafter it will automatically be renewed unless and until terminated by either party on three months' prior notice in writing to the other, the "Term".
3. The provision of any goods or services to the Client by the Agency will be quoted in advance and accepted by the Client by way of signing a Production Quotation for production services or a Media Schedule for media services, as appropriate. Where any discrepancy exists between the Production Quotations or Media Schedules and this document, Media Schedules and Production Quotations shall prevail. The price quoted in Production Quotations or Media Schedules shall be fixed unless the Client instructs an amendment to the scope of work required.
4. For media services only, the Client will receive the benefit of all relevant commissions, discounts and rebates derived from the handling of this business by the Agency to the extent that these benefits relate solely to the Client's business ("Client Discount") and these will be reflected in the price quoted on the Media Schedules.
5. Goods and services (other than media purchase services referred to in the next paragraph) purchased within the month will be invoiced at month end, and is payable 30 days from date of the Agency invoice. Any cost differences other than those referred to in Clause 4, arising from the provision of the services will be to the Agency's charge or benefit.
6. Payment for media services will be in accordance with the contract from the Media Owner and will be agreed with the Client before services are committed. All media invoices must be paid 28 days following date of invoice by the Agency with the exception of TV media which must be paid in 15 days. Non-payment by the due date will result in a media surcharge. All production invoices must be paid in 28 days from the date of invoice. If the Agency's credit insurers revise or withdraw cover for the Client, the Agency reserves the right to revise its terms of payment and if no agreement can be reached the Agency will have the right of termination. The Client will not be eligible for any early payment discounts regardless of the Agency terms with its suppliers unless there is an express agreement in writing to that effect.
7. All reasonable expenses for travel, accommodation and direct Client entertainment are re-charged to the Client.
8. Where payment is more than 28 days overdue the Agency reserves the right to suspend all further work and work-in-progress until payment has been received and cancel forthwith without prejudice to any outstanding liabilities, this Agreement and any subsisting contracts relating to the Client's advertising by giving written notice to the Client to that effect. The Agency reserves the right to charge a fee for work-in-progress and any losses suffered by us as a result of such cancellation.

## **9. Approvals and Authority**

### Approvals

Once the Client has given approval of a campaign, the Agency will submit for approval:

Copy, layouts, artwork, storyboards, and/or scripts.

Media schedules for time, space and other facilities.

Estimates for all items if requested.

Proofs of all work together with production deadlines will 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. Client's alterations (excluding corrections) and additional proofs necessitated thereby shall be charged as an extra.

The Agency specifically declines any responsibilities for technical or corporate accuracy of any typeset or visual matter and for statements or representations made under the Client's name. In giving authority to proceed, the Client is assumed to have checked the veracity of such statements, and the accuracy as well as the acceptability of the typeset and visual materials.

### Authority

Reference to authority within this clause includes instruction.

Approval by the Client of copy and layouts will be our authority to purchase production materials and prepare proofs and the approval of proofs will be authority to publish.

Approval by the Client of cinema, television and radio scripts and/or storyboards will be our authority to make production contracts and engage performers and the Client's approval of films and recording will be our authority to transmit.

Approval by the Client of media schedules will be our authority to purchase space, time and other facilities under the terms and conditions required by media or suppliers which the Client is deemed to accept.

## **10 Cancellation and Amendments**

Should the Client require the Agency to change, reject, stop or cancel any plans, schedules or work-in-progress the Agency shall take all reasonable steps to comply provided that we can do so within our contractual obligations to media, suppliers and other Clients. The Client will reimburse the Agency for any charges or expenses incurred as a direct or indirect result of any such change, rejection, cancellation or stopping and shall also pay our fees covering these items.

## **11 Warranties and Indemnities**

- 11.1 The Agency warrants that its personnel working on the Services are and shall be competent and suitable, whether as to qualifications, experience or otherwise, to perform the Services
- 11.2 If there is an error in Advertising as published or publication is delayed or does not occur as planned, the Agency will not be liable unless this is caused by its default or neglect.
- 11.3 Should either party or its employees sustain any loss or liability, costs (including legal costs) or damages as a result of the other's breach of this Agreement, the party in breach shall indemnify the other subject to the provisions of Clause.

- 11.4 The Client warrants that to the best of its knowledge information and belief all Account information supplied to the Agency before and during the Term will be accurate and not in any way contrary to any law applicable in any part of the Territory.
- 11.5 The Client agrees to indemnify and keep the Agency indemnified against any or all costs, demands, expenses, losses or damages incurred by the Agency arising from or out of any cancellation, delay, alteration or disruption to the production of the Advertising which results from any act or threatened act of terrorism or military action.
- 11.6 The Client accepts full legal responsibility in respect of any Advertising approved by it for publication and will indemnify the Agency in respect of any loss or liability, costs (including legal costs) or damages incurred as a result of any use of the Advertising by the Client for advertising purposes.
- 11.7 The Agency will take all reasonable precautions to safeguard the Client's property entrusted to our care, but the Agency will not be responsible in any manner howsoever, for its loss, damage, destruction or unauthorised use except where the same is the direct result of our negligence or wilful default.
- 11.8 Any claims against the Agency arising as a result of damage, delay or loss of goods in transit must be submitted in writing to the Agency and the carrier so as to reach the Agency and the carrier within three working days of delivery and claims for non-delivery within twenty-eight days of despatch of the goods. All other claims must be made within ten days of delivery.

## **12 Limitation of Liability**

- 12.1 The Agency's maximum aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed the total remuneration payable to the Agency hereunder during the preceding 12 months.
- 12.2 The Agency will not be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.

## **13 Brief**

- 13.1 The Client agrees to give a full and clear brief to the Agency and ensure all facts regarding the product or service are accurate and in no way misleading. The Client agrees to inform the Agency without delay if it considers that any claim or trade description in any advertisement submitted to the Client by us is false or misleading in relation to the Client's product or service.

## **14 Copyright and Other Rights**

- 14.1 The copyright in all copy, storyboards, visuals and all other work, (The Material), created by the Agency for the Client vests in the Agency. Providing all fees are paid in accordance with this agreement the Client has a licence to use the Material in the UK in all media for the Term of this contract.
- 14.2 Upon termination and upon the Client fulfilling all its obligations under this agreement, (including those relating to payment and the period of notice), the Agency will grant to the Client such further licences necessary for the Client to use the Material on terms to be agreed. The Agency shall also waive any Moral Rights in the Material.
- 14.3 The copyright in television, cinema and radio commercials passes to the Agency under standard forms of agreement, including but not limited to the Agreement for the Production of Television and Cinema Commercials approved by the Advertising Producers Association (formerly the Advertising Film and Video Producers Association), the Incorporated Society of British Advertisers, and the Institute of Practitioners in Advertising. As these place restrictions on future usage the Client will be subject to the rights of third parties and will be made only by special arrangement on terms indemnifying the Agency against subsequent claims by third parties.
- 14.4 Unless instructed otherwise in writing the Agency will assume all Client-supplied materials are free of intellectual property and copyright provisions or any restrictions regarding confidentiality of information.
- 14.5 For the avoidance of doubt the Agency shall:
  - 14.5.1 Be able during and after the Term to use Advertising (after first publication, broadcast or transmission on behalf of the Client) for the purpose of promoting its own business by means including but not limited to a show reel of the Agency's commercials, on the Agency's own web site and for purposes associated with the entry and conduct of advertising industry awards schemes; and
  - 14.5.2 Retain the copyright in any material contained in any presentation made in competition with any other agency in the event of the Agency's presentation being unsuccessful.

## **15 Ownership**

- 15.1 All material prepared for the Client by the Agency and paid for by the Client will be the Client's property, but not necessarily the Client's copyright. This does not apply to "stock" photographs obtained from news or photographic agencies for particular advertisements, nor to photographic or film negative. Title and ownership will remain with the Agency on all items which has not been paid for in full.

## **16 Insurance**

- 16.1 The Client will insure its property when in the possession of, and when in transit between the Agency, the media, printers, production companies and other outside suppliers and sub-contractors. Alternatively, and if the Client so requests in writing, the Agency will insure the Client's property and recharge the premiums to the Client.

## **17 Confidential Information**

- 17.1 The Agency acknowledges a duty not to disclose without the Client's permission during or after the term of appointment any confidential information resulting from studies or surveys commissioned and paid for by the Client. The Client, in turn acknowledges the Agency's right to use as the Agency sees fit any general marketing or advertising intelligence in the field of the Client's product or service, which we have gained in the course of our appointment.
- 17.2 During the continuance of this contract, we acknowledge the Agency's responsibility to treat in complete confidence all the marketing and sales information and statistics with which the Client may supply the Agency in the course of any work for the Client. Reports submitted by the Agency to the Client shall be treated as confidential.

## **18 Advertising Levies**

- 18.1 Both parties shall comply with all applicable laws and Advertising Regulations.
- 18.2 The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to comply with applicable law or Advertising Regulation.
- 18.3 The Client shall inform the Agency without delay if the Client considers that any Advertising submitted to the Client by is false or misleading or in any way contrary to law or to any applicable Advertising Regulation.
- 18.4 In order to fund the UK self-regulatory system, a levy of 0.1% is payable to the Advertising Standards Board of Finance ("ASBOF") in relation to non-broadcast advertising, and applies to the gross media cost of outdoor, cinema and press display advertisements (excluding classified lineage, semi-display and any displays, screenings and publications outside the UK), the postage cost of direct mailings in the UK, and Internet advertising in paid for space; and to the Broadcast Advertising Standards Board of Finance ("BASBOF") in relation to broadcast advertising, and applies to the gross media cost of broadcast advertisements in the UK:

## **19 Law and Jurisdiction**

- 19.1 All contracts between the Client and the Agency are to be governed by and construed in accordance with English Law and any litigation for enforcement or redress shall be brought in the Courts of England.

## **Schedule 1**

The Agency will provide the following services as agreed between the Agency and the Client:

- i) Account Handling
- ii) Creative concepts, art direction and copywriting
- iii) Artwork and despatch
- iv) Print buying
- v) Media planning and buying
- vi) Marketing planning
- vii) Research