

## Terms and Conditions of Business

### 1. Definitions

In these terms and conditions "the Company" shall mean underscore design llp and/or teamunderscore ltd and the Customer shall mean the Party with whom the Company enters into a Contract, unless expressly informed to do otherwise in writing and consent is received in writing to proceed from the nominated third party.

### 2. Contract Terms

These Conditions shall apply to all goods and services supplied by the Company. Any provision, stipulation or condition in the conditions of order of the person, firm or company whom such goods and services are supplied – the Customer – or otherwise which conflicts with or in any way qualifies or negates any of these Conditions shall have no effect and these Conditions shall prevail.

### 3. Charges, Estimates and VAT

- a) The Company shall charge such costs, charges and expenses as shall be agreed in writing with the Customer for the supply of any goods and services.
- b) Any estimates given are valid for thirty days from the date of the estimate and are based on the Company's current costs of production and, unless expressly otherwise agreed in writing, are subject to amendment on or at any time after acceptance by the Customer to cover any rise or fall in such costs.
- c) All amounts stated in this agreement are expressed to be without Value Added Tax and the Customer hereby agrees to pay in addition to the amounts stated therein all and any Value Added Tax which is or may become payable thereon.
- d) In addition to the charges, the Company will necessarily incur additional costs (to include but not to be expressly limited to artwork, photography, printing, advertising, research studies, and exhibition materials) on behalf of the Customer in the proper performance of its services within the Contract. Such costs are to be charged to the customer monthly in arrears, if applicable, or included within the written quotation of each project.
- e) The Company will not be required to make substantial advance payments or enter substantial financial commitments on behalf of the Customer and, if so requested the Customer will, upon request, pay the amount of such commitments immediately to the Company.

### 4. Preliminary work

All experimental work shall, unless agreed expressly otherwise, be charged to the Customer.

### 5. Terms of Payment

- a) The company reserves the right:
  - 1) To invoice the Customer for disbursements including but not limited to postage incurred by the Company and any such invoice shall be due and payable immediately;
  - 2) To require the Customer to provide payments on account for specific works done or to be done and expenses incurred or likely to be incurred on the Customer's behalf;
  - 3) To invoice the Customer for costs incurred after sixty calendar days have passed since initial approval to proceed is received from the Customer;
  - 4) To suspend work until such payments are made.
- b) All other invoices shall be paid in full within 30 days of the date of invoice unless otherwise agreed in writing.
- c) All invoice queries should be notified to the Company within seven days from the date of the invoice or shall be deemed accepted.
- d) Without prejudice to any other remedy available to it the Company shall be entitled to charge interest on overdue invoice at the rate of 5 per cent per annum above the Company's bankers base rate from the time in force and such interest shall accrue at such rate after as well as before any judgement.
- e) Goods or services supplied to or commenced at the request of an agent for the Customer shall be chargeable to that agent as well as to his principal.

### 6. Authority & Proofs

- a) Written or oral approval by the Customer of designs, drafts, proofs or estimates may be taken by the Company as authorisation to proceed to print/production and to enter into contracts with suppliers based on such quotes.
- b) Proofs of all work may be submitted for the Customer's approval and the Company shall not be liable for errors not corrected by the Customer in such proofs. The Customer's alterations and additional proofs necessitated thereby shall be charged in additional charges. No responsibility will be accepted for any more errors in proofs approved by the Customer.

### 7. Property and Risk in Goods

- a) The Customer shall be deemed to have accepted the goods and services on delivery but the Company shall retain ownership of all materials and goods produced by it to the order of the Customer until all goods and services to the Customer have been paid in full.
- b) The risk in the goods shall pass to the Customer upon delivery.
- c) Any material made available to the Customer by or on behalf of the Customer shall, while it is possession of the Company or in transit, be at the Customer's risk and the Company shall not be liable for any loss or damage to such materials however caused and the Customer shall insure the said material accordingly.

## 8. Confidentiality

Each of the Customer and the Company hereby undertake to keep secret and not to disclose any confidential information which comes to the notice of it in relation to the other party and/or any of its subsidiary and associated companies (other than information already in the public domain) and not to use it for any purpose other than the performance of its obligations under this agreement. The customer's confidential information shall include, but not be limited to, information and data relating to the customer's and its subsidiaries' business and their financial performance and results. The Company's confidential information shall include, but not be limited to, details of its fees, costs and unused work and concepts that it has produced. The resultant design work will be used in the Company's portfolio unless agreed otherwise in advance.

## 9. Non-Solicitation

For a period of one year after the closing of the transactions contemplated the Customer will not, directly or indirectly solicit without written approval from underscore for employment any employees, contractors, or consultants of underscore or any of its subsidiaries.

In the event of a breach (or threat of a breach) of this agreement, underscore is entitled to immediate and appropriate injunctive relief, or a decree of specific performance of this agreement, without the necessity of showing any irreparable injury or special damages.

## 10. Copyright

- a) Unless specifically agreed otherwise in writing, the copyright and all other rights of an intellectual property nature in all design, artwork, copy and other work produced by the Company under this agreement shall be and remain the exclusive property of the Company. The rights of an intellectual property nature in all design, artwork, copy and other work produced by third parties, except where the Company obtains a valid assignment of such rights from such third parties, shall remain with such third parties but the Company shall, at the customers' request use its reasonable endeavours to obtain such assignment in the event that the Customer pays all of the costs and fees involved.
- b) For the avoidance of doubt nothing in this agreement shall require the Company to assign the rights of an intellectual property nature in its work.

## 11. Insurance

The Customer shall be responsible for effecting all necessary insurance in respect of any loss, damage or expense that it may suffer directly or indirectly in relation to the provision or non-provision of the Company's goods and services.

## 12. Suspension & Termination

The Company shall be entitled to suspend its performance of the contract if and for so long as the Customer shall be in breach of any of its obligations; and

- a) if the Customer is more than 30 days in arrears on any payment to the Company.
- b) to determine the contract without notice in the event of the bankruptcy, insolvency or liquidation of the Customer at any time or the levying of any distress, execution or other legal process upon the Customer's assets or in the event of a receiver being appointed over all or any part of the Company's assets or in the event of a continuing breach by the Customer of any of its obligations.

## 13. Waiver

The waiver or non-enforcement by the Company of any breach of these Conditions shall not prevent the subsequent enforcement of these Conditions in full and shall not be deemed as a waiver of any subsequent breach.

## 14. Force Majeure

The Company shall not be liable for any delay or failure to perform any of its contractual obligations as a result of war, flood, storm, riot, fire, accident, civil commotion, acts of God, government action, failure of power supply, equipment failure, lock out, strike, default, or failure of subcontractor or suppliers or any other cause beyond its reasonable control and the Company shall not be liable for any loss, damage or expense suffered by the Customer or any third party arising directly or indirectly from any of such matters.

## 15. Variation

- a) These conditions shall not be varied, waived, or modified except in writing under the hand of a duly authorised officer of the Company.
- b) These conditions override any differing conditions which may appear on the Customer's order form or other document.
- c) The Company reserves the right to vary these Conditions from time to time subject to giving prior written notice to the Customer.

## 16. Notice

Any notices required to be given under these Conditions shall be in writing and shall be served by prepaid first class letter addressed to the party to which it shall be sent at its principal place of business or such other address as may have been notified pursuant to this provision to the party giving the notice and shall be deemed to be delivered 48 hours after posting.

## 17. Governing Law

These Conditions shall be governed and construed according to English Law and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales.

## Payment details

For details of payment by BACS – please contact Sylvie Dunn on 020 7631 8400.  
Purchase order numbers are required against every quoted element in advance of design work.  
All works listed within this document will be billed as follows;

- monthly in arrears for Phase 1
- monthly in advance for Phases 2 & 3
- Individual residual fees paid at completion