

# Nelson Associates

## *Terms of Business*

These are the terms and conditions of Nelson Associates Limited of 29 Farm Street, Mayfair, London W1J 5RL (“the Agency”) and the person identified as the Agency’s client on the quotation order or covering letter (“the Quote”) to which these terms and conditions are appended or referred to (“the Client”) and which together constitute the agreement between the Agency and the Client.

### *1. Appointment*

1.1. The Client appoints the Agency as its provider of design services in respect of the services and goods referred to in the Quote (“the Product”) which will include the activities described in Schedule 1.

1.2. The work associated with provision of the Product (“the Work”) may be divided into the stages as set out in the Quote (“the Stages”).

### *2. Term*

2.1. The Services will be provided by the Agency during the term of this agreement (“the Term”) which will be regarded as having started on the earliest of any specified date in the Quote or the commencement with the Client’s authority of any Work associated with the Product (even if such Work has commenced prior to the date of the Quote or its delivery to the Client) and will continue until terminated under clause 14.

### *3. Agency Remuneration*

3.1. The Client agrees to remunerate the Agency for the Work and the Product in accordance with the Quote.

3.2. Where the Work is divided into Stages, the Agency’s remuneration will be divided to reflect the Stages, with invoices delivered to the Client to reflect the same.

3.3. Unless specified differently in the Quote, fifty per cent of the Agency’s remuneration (together with any Additional Costs and Expenses as defined below) which have been identified in the Quote for the total Work (“the first payment”) will be payable in advance before the Agency is required to commence any Work (save for any Work which has been performed prior to provision of the Quote to the Client, in accordance with clause 2.1). The remaining fifty per cent (including any Additional Costs and Expenses) will be paid during the course of the Term, following receipt of any invoice rendered by the Agency to the Client. Such invoices will in first instance apply and take into account the first payment.

3.4. “Additional Costs and Expenses” means any cost or expense incurred by the Agency in fulfilling its obligations under this agreement (including payment for Work sub-contracted by the Agency to a third party, which sub-contracting (subject to any contrary provision in the Quote), if the Agency in its discretion considers it appropriate, is, by this clause, deemed authorised by the Client).

### *4. Approvals and Authority*

4.1. The Client will nominate a named individual to whom all requests for approval should be sent. All costs and creative work, if any, not covered by the remuneration as set out in the Quote shall where possible be estimated in advance.

4.2. The Client’s written approval of copy, layouts or artwork will be the Agency’s authority to buy materials and prepare proofs relating to the Work and to incur as necessary any Additional Costs and Expenses.

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4.3. If the Client suspends the performance of this agreement or terminates it, the Client will be required to pay the full sum owed under this agreement or (in the discretion of the Agency) to the end of the Stage in which Work is being carried out at the time of such termination or suspension. The Client will also pay all costs and expenses incurred on the Client's behalf for any Work completed at the time the agreement is so suspended, or is so terminated and for all Additional Costs and Expenses which the Agency is obliged to pay at that date, whether or not the Work or that current Stage of the Work has been completed.

4.4. Once any Work referable to any Stage has been approved by the Client, in the absence of suspension of the agreement with the consent of the Agency or termination of the Agreement in accordance with these terms and conditions, the Client will be deemed to have authorised commencement of the next Stage of the Work, and the Client is not entitled to alter or withdraw any such approval once it has been given to the Agency.

4.5. The Agency may require any Client approval to be in writing, but subject thereto, the Agency is entitled to rely on any oral approval given by the Client.

## *5. Payment of Invoices*

5.1. Subject to clause 5.2 all invoices rendered by the Agency to the Client under this agreement shall be paid without set off 30 days from the invoice date.

5.2. The Agency is entitled to render invoices to the Client at any time for any Additional Costs and Expenses incurred on the Client's behalf for any Work. The Agency may demand in its discretion either payment in advance prior to incurrence by the Agency of any such Additional Costs and Expenses or immediate payment on receipt of any invoice or part of an invoice reflecting such Additional Costs and Expenses, where Client has been notified in advance either by the Quote or otherwise of the requirement to incur such Additional Costs and Expenses.

## *6. Changes in Work Scope and Timing*

6.1. If the Client changes the Product or necessary tasks set out in the Quote or by subsequent agreement of the parties (including the content of any Stage) during the course of Work, or extends or shortens the timing anticipated thereby, the Agency will provide a revised estimate and timing as necessary and seek approval of that revision and the use of additional resources needed to execute the Work outside the previously agreed scope and timing and in the event such approval by the Client is not given, the Agency shall at its option be entitled to suspend Work or proceed with the Work as originally authorized and unrevised.

6.2. If the project is delayed or put on hold by the Client during the course of work, the Agency will invoice fees, costs and expenses for work undertaken or contracted for up to the date of the delay.

## *7. Intellectual Property/Copyright*

7.1. On termination of this agreement and subject to payment of all monies due to the Agency under it, the Agency shall, in consideration of the payment of £1.00, assign absolutely to the Client all intellectual property rights in all Products, to the extent that such intellectual property rights are vested in the Agency.

7.2. The Client shall provide the Agency with copies of all trade marks and branding which are to be included in any Product and the Client hereby grants the Agency a royalty free licence to use, copy and reproduce such trade marks and branding for the purpose of carrying out the Work and supply of any Product. Likewise the Client warrants to the Agency that it has all necessary rights in any material supplied to the Agency by the Client or authorized by the Client to be used by the Agency to enable any Work to be done and to supply any Product, and will indemnify the Agency against any loss cost or expense incurred by any breach of such warranty.

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7.3. The Agency will use all reasonable endeavours to obtain all copyright and a waiver of moral rights in respect of Work sub-contracted to or acquired from third parties but it cannot undertake that in all cases it will be able to do so. In the event that the Agency is unable to obtain copyright or a waiver of moral rights in respect of such work the Agency shall inform the Client before any such third party agreement is entered into by the Agency.

## *8. Warranties and Indemnities*

8.1. Subject to the Client's warranty contained in clause 7.2 and the provisions of clause 7.3, the Agency acknowledges that it owes the Client a duty to use all reasonable endeavours to ensure that the Work and supply of any Product does not infringe the copyright, registered trademarks, registered designs, design rights, patents or any other rights of any third party and is not in any other way contrary to law.

8.2. The Agency indemnifies the Client for any loss cost or expense incurred by the Client as a result of any breach of its warranty contained in clause 8.1, subject to the limitation of its liability as set out in clause 9.

## *9. Liability and Responsibility*

9.1. While the Agency makes every effort to ensure that the Work and the Products comply with applicable laws, the Agency is not providing legal services as part of this agreement. The Client is ultimately responsible for the accuracy and legality of all Work and or Products that the Client accepts or uses, whether by itself or by third parties.

9.2. Nothing in this agreement shall exclude or in any way limit either party's liability for death or personal injury caused by that party's negligence. Subject to this, neither party shall be liable to the other for any loss of contracts or loss of actual or anticipated income or profit or for any indirect, special or consequential damages, loss or expenses arising under this agreement whether or not such loss or damage is foreseeable, foreseen or known in excess of the sums paid or to be paid for the Services under the terms of this agreement. Subject thereto, the maximum liability of the Agency to the Client for any breach of agreement or negligence shall be the total remuneration payable to the Agency by the Client as at the termination of the agreement (excluding any Additional Cost and Expenses paid or for which the Agency is liable to pay) where the Client's claim in that regard has been notified to the Agency in writing no later than 12 months following termination of the agreement and save as stated any liability of the Agency is excluded.

## *10. The Clients Right of Ownership*

10.1. Any Product (including strategy documents, names, designs, or work schedules) prepared or supplied by the Agency that the Client accepts and uses (including copyright ownership) become the Client's property on the later of the termination of this agreement or the payment of all monies due to the Agency by the Client under it. Other project materials supplied by third parties, such as photography, illustrations or written copy, may be subject to copyright laws, and thereby clause 7.3.

## *11. Agency Right of Ownership*

11.1. Any concepts or materials not used by the Client remain the property of the Agency. Subject to contrary provision in the Quote or subsequent written agreement of the parties, the Agency has the right (the Client to the extent necessary by this clause being deemed to provide to the Agency any licence required thereby) to use any concepts and techniques developed during the project and may show any elements of the Work in its marketing activities, but strictly without permitting any use by any third party, and subject to Clause 14. The Agency reserves the right to require from the Client and the Client agrees to provide upon such requirement being made, whether before or after termination of this agreement (which requirement shall survive such termination) an acknowledgement in writing of such right.

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## *12. Statements*

12.1. The Client and the Agency agree to:

(a) inform each other immediately if any claim, statement or representation in any copy to be published is, or is likely to be defamatory, in breach of copyright, in breach of the terms of any Act or provision of law, or is in any other way unlawful;

(b) inform each other without delay if it considers any claim or trade description in any copy is false or misleading in relation to the product or service to be advertised.

## *13. Termination*

13.1. Either party has the right to terminate the agreement immediately if the other:

13.2 (a) has committed a material breach of this agreement, unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other party has failed to remedy the breach within 14 days after a written notice to do so; or

(b) becomes insolvent or is the subject of a bankruptcy order.

13.3. For the purposes of clause 13.1 (a) any attempt by the Client to withdraw the Client's previous approval of Work, whether following completion of any Stage, or otherwise, shall be deemed to be a material breach of this agreement.

13.4. Subject to any alternative provisions in the Quote either party may terminate this agreement for any other reason on the conclusion of the Work or at any Stage:

by the Client on giving written notice to the Agency not more than 21 days following receipt of notification of such conclusion by the Agency of any Stage or of the Work; or by the Agency, if the Client has: neither approved the Work or any Work done in that Stage, nor stated in what manner the Client does not approve the Work, or the Work done at that Stage; or

(bb) has not approved within 21 days of the notice of conclusion of the Work or the Work at that Stage, where that conclusion follows a third attempt by the Agency to respond to the Client's stated objections to the Work or the Work done for that Stage.

## *14. Confidentiality*

14.1. Save where necessary to perform the Services the parties agree to keep all information in relation to the business of the other confidential during and after the term of the agreement. This clause will not apply to:

(a) any information which has been published other than through a breach of this agreement;

(b) information in the possession of the recipient party before the disclosure under this agreement took place;

(c) information obtained from a third party who is free to disclose it;

(d) information which a party is required by law to disclose.

## *15. General*

15.1. The agreement made between the parties (which consists of this agreement the Quote and any Schedules), contains the total understanding of the parties and supersedes all previous understandings between them either in writing or oral, provided that this shall not apply to fraudulent or negligent misrepresentation.

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15.2. If, due to war, strike, lockout, accident, fire blockage, natural catastrophe or other obstacles over which it has not control, any party fails to comply with any obligation to the other party in the manner and time required, it shall not be held responsible for any loss or damage which may be incurred by the other party as a result of such failure.

15.3. This agreement can only be amended or modified by written agreement signed by both parties.

15.4. Neither of the parties to this agreement may assign their rights or benefits under this agreement without prior written consent from the other party.

1.3 The Contracts (Rights of Third Parties) Act 1999 does not apply so as to give to a person who is not a party to this agreement a right under it.

15.5. If any provision of this agreement at any time is or becomes illegal, invalid or unenforceable under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this agreement under the law of that jurisdiction, nor the legality, validity or enforceability of that provision or any other provisions of this agreement under the law of any other jurisdiction will in any way be affected or impaired. In particular, the limitation of the Agency's liability contained in clause 9.3 if deemed invalid or unenforceable in relation to any specific situation or set of facts, shall (where possible) be deemed, in the context of any other situation or set of facts, to include an exception to cater for the situation giving rise to its invalidity or unenforceability.

## *16. Governing Law*

16.1. This agreement and the rights of the parties under it shall be governed by and construed in accordance with English Law. The parties agree to submit to the non exclusive jurisdiction of the courts of England and Wales.

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