



**Standard Client Creative Service Terms & Conditions**  
**Front Ideas Ltd**

**Definitions**

**Advertising Standards** - the codes of conduct and rulings (as appropriate) of the Advertising Standards Authority, the British Code of Advertising Practice, the IBA Court of Advertising Standards and Practice for Radio and Television, the Institute of Practitioners in Advertising and the other codes of standards laid down voluntarily within the industry to ensure that all advertising placed is legal, decent, truthful and honest.

**Brief** - an outline description of the services which may form the basis of an Order

**Client (You, Your)** - Whoever acts as principle in commissioning Creative Services

**Creative Agency (Our, Us, We)** - Front Ideas Ltd (Front)

**Creative Material** - whatever We originate or source from third parties in order to fulfil an Order for Creative or Marketing Services

**Creative Service** - Includes, but is not limited to design consultation, origination of artwork and copy and the production and delivery of Marketing Material as required by the Client.

**Due Date** - Where credit terms have been agreed in writing - 25th day of the month following the month in which the Creative or Marketing Service was invoiced otherwise the date of the Order.

**Marketing Material** - Includes, but is not limited to: Advertisements, Brochures, Leaflets, Flyers, Mailers, Signs, Displays, Web Sites, Video, Soundtracks. Also images, designs and styles for inclusion in Client's other work.

**Marketing Service** - Includes, but is not limited to: activity undertaken by Us, whether or not using Marketing Materials produced by Us, to deliver Marketing Materials to potential customers; provision of leads, market intelligence or marketing data.

**Media Buying Agency** - whoever is acting for You in the procurement of Media Activity

**Media Activity** - includes, but is not limited to: space in any printed or electronic publication or medium; airtime on any broadcast medium; direct marketing by printed or electronic method; internet marketing.

**Media Buying Service** - scheduling Media Activity; agreeing the price and placing orders with the Media Owners for the fulfilment of Media Activity as required by the Client.

**Media Owner** - any third party responsible for the fulfilment of the Media Activity.

**Order** - any order placed by You or the Client's Agent and accepted by Us for the delivery of Creative or Marketing Services.

**Client's Agent** - any third party engaged by the Client to participate in production of Creative Material and/or to place orders for Creative or Marketing Services on the Client's behalf.

**Written (Writing)** - written communication in English in either hard copy, facsimile or, with the exception of notice under clause 11, e-mail form

**1) Legal Status**

We act in all our contracts as a principal at law.

**2) Duration and Scope of the Terms & Conditions**

2.1) These Terms & Conditions will remain in force unless and until varied in Writing in accordance with clause 11 below.

2.2) All Orders placed by the You and accepted by Us will be separate Contracts subject to these Terms & Conditions.

**3) Terms of Payment**

3.1) Our settlement terms are payment by cheque received by Us by the Due Date, or cleared funds in our account by bankers automated clearing (BACS) by 2 working days following the Due Date.

3.2) Invoices dated in one month may be despatched up to 10 days after the month end without affecting the Due Date

3.3) Settlement will not be complete unless a remittance advice giving details of invoices being paid has also been received by Us.

3.4) Failure to settle within 5 days of the Due Date entitles Us to impose an immediate 3 per cent surcharge followed by a 2 per cent surcharge in respect of each succeeding month before settlement.

3.5) Where an invoice remains unpaid for more than three months, we reserve the right to cancel forthwith, without prejudice to any outstanding liabilities, any subsisting Contracts relating to Your Creative or Marketing Services by giving written notice to You to that effect. We reserve the right to charge a fee for work in progress and any losses suffered by Us as a result of such cancellation.

3.6) Cancellation of a Contract under clause 3.5) will also automatically cancel any other subsisting Contracts and any media services agreement or media contracts with Us and such cancellation will create no liability for early termination.

**4) Approvals and Authority**

4.1) You agree to give a full and clear Brief to Us and ensure that all the facts given about the product or service are accurate and in no way misleading. You agree to inform us without delay if You consider that any claim or trade description in any advertisement submitted to You by Us is false or misleading in relation to Your product or service.

4.2) After receiving Your Brief, we will submit to You for specific approval as appropriate:

- (i) Estimates for the cost of the various services which may be involved.
- (ii) Charge rates for services where the costs cannot reliably be estimated

4.3) Unless specifically stated in the Brief, We will require Your Written confirmation that the Brief will form the basis of an Order in accordance with the estimates given

4.4) Where You require to see proofs for approval before production costs are committed You must specify this in the Brief and Order. Where proofs are required Your approval of copy and layouts will be our authority to purchase production materials and prepare proofs, and Your approval of proofs will be Our authority to commit to completion of the Order.

4.5) Your Order will be confirmation that costs reasonably incurred by us up to the time of Approval will be chargeable to You whether or not the proofs are subsequently Approved.

4.6) Where time is of the essence for the delivery of Marketing Materials or Services or Creative Materials or Services You must specify this in the Brief and Order.

4.7) Where Your Order is given on Your standard order form stating Your standard conditions, in as much as those conflict with these Terms & Conditions, these Terms & Conditions will take precedence.

**5) Cancellation and Amendments to Orders**

5.1) You may request Us in Writing to change, reject, cancel or stop any and all plans, schedules or work in progress, and We shall take all reasonable steps to comply, provided that We can do so within Our contractual obligations to third parties.

5.2) You will reimburse Us for any reasonable charges or expenses incurred by Us as a direct or indirect result of any such change, rejection, cancellation or stopping.

**6) Limitation of Liability**

6.1) Notwithstanding anything else to the contrary in these Terms & Conditions, We do not exclude or limit Our liability (even if any other term would otherwise suggest this may be the case) for death or personal injury caused by Our or Our employees' negligence or for fraudulent misrepresentation.

6.2) If, due directly or indirectly to war, terrorist action or threatened action, hostilities, strikes, industrial action short of a strike, lock-outs, accident, civil commotion, fire, blockage, import or export embargo, natural catastrophe, Act of God or any other matter of similar nature affecting Us, Our staff, Our management, outside suppliers, Media Owners or other relevant parties, We fail to carry out the service contemplated by a Contract (or any part thereof) such failure shall not constitute a breach of Contract and We shall not be liable to any manner howsoever for any costs, expenses, loss or damage which may be incurred by You directly or indirectly as a result of such failure.

6.3) We will not be liable for any indirect or consequential loss (including loss of profits) to You or for any loss to You arising from claims of whatever nature by third parties.

6.4) We will use Our best endeavour to complete an Order in the time and to the specification contained in the Order, but, even if time is stated to be of the essence, should the Order not be completed to time or specification, Clause 6.3 will still be applicable.

6.5) We will take all reasonable precautions to safeguard Your property entrusted to Our care, but We 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.

6.6) Any claims against Us arising as a result of damage, delay or loss of goods in transit must be submitted in writing to Us and the carrier so as to reach Us and the carrier within three 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.

6.7) Subject to clause 6.1 above, Our maximum aggregate liability under or in connection with any Contract under these Terms & Conditions shall not exceed the fees paid by You to Us in respect of that Contract.

#### **7) Indemnities**

You will fully and effectually indemnify Us and keep Us so indemnified at all times against all proceedings, threatened proceedings, claims, demands, penalties, fines and civil liabilities of whatever nature (and all costs and expenses incurred in connection therewith and all costs incurred in connection with any criminal liabilities, proceedings, threatened proceedings) including, but not limited to, infringement of intellectual property rights and breaches of Advertising Standards, which may at any time be incurred by, imposed on or asserted against Us in any way relating to or arising directly or indirectly in any manner in connection with any work of whatever nature prepared by Us for You and approved orally or in writing by You prior to publication, transmission or commencement of production.

#### **8) Copyright and Other Rights**

8.1) All intellectual property rights (including, in the case of copyright, by way of present and future assignment), together with the right to sue for damages for past infringement, in and to the Marketing Material produced by Us for You under these Terms & Conditions remain with Us. Without Written assignment You may not, nor allow any third party to, incorporate any part of the Marketing Material into other work.

8.2) Notwithstanding anything else in these Terms & Conditions, We shall retain the right to use any general know-how, expertise and experience gained in providing Creative and Marketing Services. In addition, We shall retain ownership in all intellectual property rights in and to all underlying, pre-existing computer software tools, formats and other content incorporated in the Marketing Material produced for You under these Terms & Conditions ("Pre-existing Material") and We shall be entitled to use such Pre-existing Material as We see fit, including, without limit, to provide services to Our other clients.

8.3) If and to the extent that the Marketing Material produced for You includes or incorporates any material the intellectual property rights in which are owned by a third party, We shall use reasonable endeavours to obtain such usage rights in such Marketing Material as are deemed reasonably necessary by Us at the time such material is commissioned or obtained and We shall grant to You (at Your expense) only such rights as We are permitted by the relevant third party to grant to You. We will assume that any materials You supply to Us to be incorporated in our work for You includes full usage rights from You or the third party from which you obtained the materials.

8.4) Notwithstanding any of the above, We shall:

- i) be entitled to use Marketing Material produced for You for the purpose of promoting Our own business, for example, by including the same on Our web site and/or entering into industry awards; and
- ii) retain all intellectual property rights in any work produced by Us, during the provision of the services or otherwise, which is not included or incorporated into the Marketing Material produced for You, including without limitation any work contained in a pitch or presentation made to You, whether in competition with another design company or not, in the event that You choose not to proceed with Our design beyond concept stage.

#### **9) Ownership, Insurance and Custody of Material**

9.1) Subject to copyright under clause 8.1 and the following provisions of this clause all Marketing Material prepared for You by Us and paid for by You will be Your property. This does not apply to 'stock' photographs obtained from news or photographic agencies neither for particular advertisements, nor to photographic or film negative.

9.2) Subject to clause 6.5 We will keep in Our care materials entrusted to Us as Your property, but will not be required to recover plates, positives and other similar items from Media Owners and other suppliers once We have parted with them which You hereby authorises Us so to do. We shall be entitled to destroy all such material left in Our custody for more than one year, or after giving notice to You at such earlier time as We consider reasonable.

9.3) You will insure Your property when in the possession of, and when in transit between Us, the Media Owner, printers, production companies and other outside suppliers and sub-contractors.

#### **10) Confidential Information**

10.1) Save as required by law or regulatory body, we acknowledge a duty not to disclose without Your permission during or after the fulfilment of a Contract any confidential information resulting from studies or surveys commissioned and paid for by You. In turn, You acknowledge Our right to use as We see fit any general marketing or advertising intelligence in the field of Your product or service which we have gained in the course of Our appointment.

10.2) During or after the continuance of Contracts under these Terms & Conditions, We acknowledge Our responsibility to treat in complete confidence all the marketing and sales information and statistics which You may supply Us in the course of any work for You. In turn any reports and information submitted by Us to You shall be treated by You as confidential.

10.3) When You provide Us with personal data which is or should be subject to the Data Protection Act(s) (Personal Data) You warrant that the Personal Data is to be used for a purpose for which You have a current and valid Data Protection registration and that You have proper consent for that use from each person. You will remain the data controller as defined by the Act. In turn We undertake to only use the Personal Data for the use which You intended and we will execute reasonable care in the security of the Personal Data which We will retain only as long as reasonably required for proper execution of the Order to which it relates. Where We pass the Personal Data to a third party for part of the fulfilment of the Order We will require a similar undertaking from the third party.

#### **11) Variation, Termination and Continued Applicability**

11.1) Any variation to these Terms & Conditions will only be valid if agreed in Writing and signed by a director of both parties.

11.2) Termination of a Contract may be effected at any time under and subject to Clauses 2 and 5 above.

11.3) Both parties may terminate Contracts under these Terms & Conditions immediately upon notice if:

- i) the other commits a material breach of these Terms & Conditions and, if remediable, such breach is not remedied within 30 days of the date of written notice sent to that party by the party not in default, specifying the nature of the breach and requiring that the same be remedied within such 30 day period; or
- ii) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- iii) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- iv) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- v) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- vi) the other party ceases, or threatens to cease, to trade; or
- vii) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or
- viii) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.4) We reserve the right to terminate all Contracts under these Terms & Conditions and/or suspend performance of all services provided to You (at our absolute discretion) in the event that You fail to fulfil Your obligations to pay under 3 above.

11.5) Where there is no new Creative or Marketing Services activity arising from Contracts under these Terms & Conditions the parties agree that all the terms of these Terms & Conditions will remain in force in respect of any Orders already placed by You.

11.6) Except for cancellation under clause 3.5, termination of Contracts under these Terms & Conditions does not terminate any separate agreement or contracts You may have with Us.

11.7) On termination of a Contract for any reason:

- i) You will immediately pay to Us all of Our outstanding unpaid invoices and interest and, in respect of services supplied but for which no invoice has been submitted, We may submit an invoice, which shall be payable immediately on receipt; and
- ii) You will return all of Our Marketing Materials. If You fail to do so, then We may enter Your premises and take possession of them. Until they have been returned or repossessed, You will be solely responsible for their safe keeping; and
- iii) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

#### **12) Assignment and Rights of Third Parties**

12.1) You shall not, without Our prior Written consent, assign, transfer, charge, sub-contract or deal in any other manner with all or any of Our rights or obligations under the Contract.

12.2) Contracts are made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else.

#### **13) Notices**

Notice given under these Terms & Conditions shall be in Writing, sent for the attention of the Managing Director at the registered office (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

#### **14) Law and Jurisdiction**

All Contracts between You and Us 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.