



Terms and Conditions of Business

DEFINITIONS

1. In these conditions, the following terms shall have the following meanings:
'Milk' means Milk Visual Effects Limited of Clerkenwell House, 67 Clerkenwell Road, London EC1R 5BL upon whose document these conditions are endorsed. 'the Client' means the person, firm, company or other body to whom such document is addressed. 'these conditions' means these conditions of business; and 'the contract' means the contract to which these conditions apply and which incorporates these conditions.

FORMATION OF CONTRACT

- 2.1 All goods, services or facilities are offered and all contracts are entered into subject to the following conditions of business. All terms, conditions or warranties whatsoever are, to the maximum extent permitted by law, excluded from the contract or any variation thereof unless expressly accepted by Milk in writing. No servant or agent of Milk has the power to vary these conditions orally or to make any statement or representation about the goods, services or facilities offered, their fitness for any purpose or any other matter whatsoever.
- 2.2 These conditions shall be incorporated into any contract between Milk and the Client to the exclusion of any terms or conditions stipulated or referred to by the Client. Any dealings with Milk following receipt by the Client of notice of these conditions shall automatically be deemed acceptance thereof notwithstanding the absence of formal acknowledgement.
- 2.3 Unless otherwise expressly stated in writing, all quotations and estimates supplied by Milk are invitations to treat. The Client's order is an offer and shall become binding upon acceptance by Milk.

PRICES

- 3.1 All prices quoted are exclusive of Value Added Tax (VAT). Milk shall further be entitled to make an adjustment to the quoted price in the event that:-
 - 3.1.1 additional costs are incurred by Milk due to materials supplied by the Client or any third party being in the opinion of Milk, in any way defective, in an unsuitable format (or a different format to that which Milk is expecting to receive the same) or of unsuitable quality for normal processing; or
 - 3.1.2 the information supplied by the Client or any third party in connection with its order does not provide a full and accurate indication of the work involved; or
 - 3.1.3 additional costs are incurred by Milk, due to alterations by the Client or any third party in its requirements.
 - 3.1.4 additional costs are incurred by Milk due to late turnover by the Client.
 - 3.1.5 additional costs are incurred by Milk due to exceptional circumstances outside the control of Milk, including currency fluctuations and changes in third party costs.

PERFORMANCE, DELIVERY OR COLLECTION

- 4.1 Unless otherwise agreed in writing, all times quoted for performance or delivery or availability for collection are given in good faith but are not guaranteed. Notwithstanding that Milk and the Client may have agreed that time is of the essence, the time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information and material, final instructions or approvals from the Client. Alteration by the Client of its requirements may result in delay in performance, delivery or collection.
- 4.2 Any packaging supplied by Milk, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the contract or as may be otherwise agreed. If the Client (or the intended recipient) fails to take delivery on the agreed delivery date or to collect on the agreed collection date or, if no specific delivery or collection date has been agreed, when the goods are ready for despatch, Milk shall be entitled to store the goods and to charge the Client the reasonable costs of so doing and to tender its account for such charges under condition 5. Notwithstanding the terms of condition 7.1 below, Milk shall be under no liability in respect of any loss or damage following the despatch of any goods from Milk's premises.

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4.3 If Milk and the Client shall agree that any goods shall be delivered electronically ("Direct Delivery") the following provisions shall as applicable apply:

4.3.1 the Client acknowledges that Direct Delivery is not or may not be a completely secure medium of communication and that an unauthorised third party may intercept, tamper with or delete goods delivered by Direct Delivery and that Direct Delivery may involve reliance upon third party data carriers over which Milk has no control; and

4.3.2 Milk shall not be responsible for and shall have no liability to the Client or any third party for:

4.3.2.1 any delay to any Direct Delivery or any non receipt of any goods delivered by Direct Delivery;

4.3.2.2 any loss or damage that results from any person gaining unauthorised access to any Direct Delivery of any goods;

4.3.2.3 use or disclosure of any data obtained by any third party as a result of the same having gained unauthorised access to any Direct Delivery; and

4.3.2.4 any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, Trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Direct Delivery.

TERMS OF PAYMENT

5.1 Subject to condition 5.2 and unless otherwise agreed by Milk in writing all invoices rendered by Milk are payable within 14 days of the dates thereof.

5.2 Milk expressly reserves the right at its sole option to require payment by instalments during the performance of the contract and/or payment of all amounts owing to Milk immediately prior to delivery or making goods available for collection.

5.3 The Client shall pay all amounts owing to Milk in full and shall not exercise any rights of set off or counterclaim against invoices submitted. Payment of all amounts shall only be made in the currency in which they are invoiced and shall not be subject to any deductions/charges whatsoever.

5.4 In the event of default in payment by the Client under any contract between the Client and Milk, Milk shall be entitled, without prejudice to any other right or remedy, to suspend any further performance of or deliveries under any contract or contracts between Milk and the Client without notice and to charge interest on any amount outstanding at the rate of 4% above the Bank of England base rate from time to time (accruing from day to day both before and after judgment), from the due date of payment to the actual date of payment.

5.5 All prices quoted or agreed are exclusive of any applicable value added tax, which the Client shall be liable to pay in addition.

CANCELLATION

6.1 Any contract between Milk and the Client may only be cancelled or varied with the written consent of Milk and upon the terms of these conditions. The giving of Milk's consent shall not in any way prejudice Milk's right to recover from the Client full compensation for any loss or expense arising from such cancellation or variation.

6.2 If notwithstanding condition 6.1 and without prejudice to any other rights or remedies available to Milk, the Client shall give Milk notice of cancellation of an order which notice is received by Milk:

6.2.1 less than five working days prior to, as applicable, the date for performance or the commencement of performance or the date on which the applicable facilities were to be utilised by or on behalf of the Client (the "Contract Date"), Milk shall be entitled to charge the Client the full contract price or, if none is stated, the applicable amount under Milk's rate card current at the Contract Date; and

6.2.2 less than ten working days but more than five working days prior to the Contract Date, Milk shall be entitled to charge the Client one half of the contract price or, if none is stated, one half of the applicable amount under Milk's rate card current at the Contract Date in each case reflecting the fact that Milk is unlikely to be able to secure an order for the facilities that had been allocated to the processing of the Client's order from a third party within the time available.

LIABILITY

7.1 The Client hereby agrees that without limiting any other provision of these conditions:

7.1.1 to the maximum extent permitted by law Milk's entire liability for breach of any provisions of the contract, or any terms, warranties or conditions implied in the contract by operation of law, including Milk's liability for negligence (except where such negligence results in death or

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personal injury) are excluded;

7.1.2 under no circumstances shall Milk be liable for any consequential loss whatsoever (including damages for loss of business profits, business interruption or other indirect pecuniary loss of any kind);

7.1.3 Milk's entire liability for any direct loss suffered by the Client, as a result of Milk's breach of the contract and for which Milk shall notwithstanding any other provision of the contract be liable, shall (subject to the terms of conditions 4.2, 4.3 above and 9.1 below) be limited to the amount actually paid by the Client in accordance with the contract;

7.1.4 the price to be paid by the Client under the contract reflects the limitation on the liability accepted by Milk; and

7.1.5 this condition 7.1 is reasonable and necessary in the circumstances and that having regard to that fact, this condition does not work harshly or unreasonably against the Client.

7.2 The Client shall indemnify Milk from and against:-

7.2.1 all claims or proceedings taken against Milk by any third party including any client of the Client, Milk's employees, the Client's employees or the employees of any contractor employed by the Client or Milk or the personal representatives or dependents of any such employee or other third party in respect of personal injury or damage to property caused by or arising out of any act or omission of Milk in the course of carrying out the specific instructions of the Client;

7.2.2 all claims or proceedings taken against Milk arising out of the acts and/or omissions of the Client, its agents or sub-contractors or any of their respective employees, whether negligent or otherwise.

7.3 The Client expressly agrees that it will at all times maintain and keep effective insurance policies with reputable insurers with sufficient cover which protect the Client against any loss or liability which it may incur or suffer arising out of the contract or any act or default of Milk in the performance by Milk of its obligations to the Client. Such insurance shall include insurance for any damage or loss for which Milk is not liable pursuant to the conditions hereof, insurance which protects the Client against any accidental loss, damage or destruction to any visual images or sound held in any media or any other materials of any kind supplied to Milk whilst in the possession or control of Milk. Milk accepts no liability for any liability or loss which arises from any failure by the Client to maintain and keep effective such insurances.

7.4 Any recommendations or suggestions relating to the use of any goods supplied by Milk are given in good faith but it is for the Client to satisfy itself of the suitability of the goods for its own particular purpose. Accordingly unless otherwise expressly agreed in writing and notwithstanding and without limiting condition 7.1, Milk gives no warranty as to the fitness of the goods for any particular purpose even though that purpose may be specified in the Client's order and any implied warranty or condition (statutory or otherwise) to that effect is excluded.

7.5 In the case of goods or component parts of goods supplied by Milk but not of Milk's manufacture, Milk shall be entitled to assign to the Client its rights against its supplier and such rights shall be taken in extinction of and in substitution for any rights which the Client would otherwise have had against Milk.

INTELLECTUAL PROPERTY AND DATA PROTECTION

8.1 The Client shall indemnify Milk from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any defamatory or libelous matter or any infringement or alleged infringement of any patent, trademark, copyright, registered design or design copyright or other exclusive right including any moral right claim or any other title of any third party in respect of any work carried out for the Client by Milk.

8.2 Each of Milk and the Client acknowledge and agree that copyright in underlying materials processed by Milk in the performance of its services and/or embodied in materials produced by Milk may be owned by third parties and that the use by the Client of all materials processed and/or produced by Milk shall be subject always to the Client obtaining any and all necessary licences and consents from the relevant underlying rights owner(s). The Client hereby grants to Milk a perpetual and royalty free licence to use all materials processed and/or produced by Milk on the Client's behalf to promote Milk's business and in connection with appropriate industry awards.

8.3 Without limitation to the rights of Milk at law, the Client acknowledges and agrees that if, in the course of fulfilling the Client's order and/or processing or producing materials on behalf of the Client, Milk discovers or devises any techniques or know how, all rights of every kind in and to such techniques and know how, shall vest absolutely in Milk.

8.5 The Client acknowledges that in the course of its dealings with Milk, Milk may acquire personal data which relates to the Client and/or any of its officers, employees or contractors and the Client hereby consents to Milk, in accordance with its authorisation and the Act, collecting, storing, processing and transferring to third parties such personal data. The Client further consents to the sale or transfer by Milk of such personal data in

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connection with an assignment or transfer of any of its assets and its disclosure in compliance with any rule of law or order of competent authority.

8.6 The Client's consents pursuant to this condition 8 are given by it for itself and on behalf of (if any) its officers, employees and contractors and the Client hereby warrants to Milk that it has the authority to give such consent on behalf of those persons.

CLIENT'S MATERIALS

9.1 Where the Client supplies any materials to Milk or where any materials or goods which are the property of the Client are otherwise left in Milk's possession:-

9.1.1 notwithstanding the terms of condition 7.1. above, Milk shall be under no liability in respect of any loss or damage or otherwise arising as a result of damage to or the loss or destruction of such materials or goods;

9.1.2 without limiting the terms of condition 7.3 above, the Client shall insure all such materials or goods to their full value against all risks; and

9.1.3 the Client shall remove all such materials or goods within six months of the date of issue of Milk's invoice relating to such materials or goods in respect of which the materials have been utilised and in default, Milk shall be entitled to return all such materials or goods to the Client and to charge the Client for any costs and expenses incurred by Milk in so delivering such materials or goods. Until the removal or return of the materials or goods, Milk shall be entitled to store the materials and goods and to charge the Client the reasonable costs of so doing and to tender its account for such charges under condition 5. In the event that Milk does not so return such materials or goods, Milk shall be under no liability whatsoever for any loss or damage to such materials or goods whilst they are in the possession of Milk and the Client is advised to maintain insurance to the full value of such materials or goods against all risks.

9.2 Where materials are supplied or specific instructions are given by the Client, Milk accepts no liability for any reduction in the quality of Milk's services caused by defects in or the unsuitability of such materials so supplied or by Milk's adherence to such specific instructions.

RISK AND TITLE

10.1 Risk shall pass to the Client so that the Client is responsible for all loss, damage or deterioration to the goods the subject of the contract:-

10.1.1 if Milk delivers the goods by its own transport or, in accordance with a specific contractual obligation, arranges transport for the goods at the time when the goods or a relevant part thereof arrive at the place of delivery; or

10.1.2 in all other circumstances, at the time when the goods or a relevant part thereof leave the premises of Milk, or

10.1.3 if risk otherwise passes in accordance with the conditions hereof.

10.2 Title to the goods the subject of the contract or any relevant part thereof shall only pass to the Client upon the Client paying to Milk all sums due and payable by it to Milk under the contract and all other prior contracts between Milk and the Client;

10.3 Milk may recover goods in respect of which title has not passed to the Client at any time

10.4 Until title to the goods has passed to the Client pursuant to the terms hereof:

10.4.1 it shall possess the goods as a bailee of Milk on the terms of these conditions;

10.4.2 if Milk so requires the Client shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to Milk;

10.4.3 the Client shall be entitled to re-sell or use the goods in the ordinary course of its business but shall account to Milk in respect of the proceeds of sale or otherwise of such goods;

10.4.4 the Client shall maintain records of the persons to whom it sells or disposes of the goods and of the payments made by such persons for such goods and will allow Milk to inspect those records on request; and

10.4.5 Milk shall be entitled to trace the proceeds of sale or otherwise of the goods.

10.5 The Client hereby irrevocably authorises Milk, its officers, employees and agents to enter upon any premises of the Client for the purpose of repossessing any goods in respect of which title has not passed to the Client and/or to ensure that the provisions of this condition 10 are being complied with.

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CLIENT INPUT AND ACCESS TO/USE OF MILK'S PREMISES AND EQUIPMENT

11.1 The Client shall be solely responsible for ensuring that all information, advice and recommendations given to Milk either directly or indirectly by the Client or by the Client's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by Milk of such information advice or recommendations shall in no way limit the Client's responsibility hereunder unless Milk specifically agrees in writing to accept responsibility.

11.2 The Client hereby undertakes to Milk to ensure that all of its personnel (to include all employees and agents of the Client) that shall at any time have access to any premises occupied by Milk or at which any of Milk's equipment shall be kept all such persons shall at all times:

11.2.1 observe all rules and regulations in force at the applicable premises to include health and safety regulations and any rules governing the use of equipment and/or facilities at the applicable premises;

11.2.2 keep confidential and not divulge or communicate or make any use of any confidential information (being any and all information which relates to and/or concerns the business or activities of Milk and/or any Client of Milk) which the applicable person shall become aware of as a result of being present at the applicable premises.

11.3 The Client shall indemnify Milk from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any breach or non-observance of any provision of condition

11.2 by any of the Client's personnel.

INSOLVENCY

12. If the Client shall become bankrupt or under the provisions of Section 123 of the Insolvency Act 1986 shall be deemed to be unable to pay its debts or compounds with its creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation

of the Client (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager or Administrative Receiver is appointed of all or any part of its assets or undertaking, Milk shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to Milk.

FORCE MAJEURE

13. In the event of the performance of any obligation accepted by Milk being prevented, delayed, or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond Milk's control, Milk may at its option suspend performance or cancel its obligations under the contract without liability for any damage or consequential loss resulting there from, such suspension or cancellation being without prejudice to Milk's right to recover all sums owing to it in respect of goods delivered and costs incurred up to the date of the suspension or cancellation.

SUB-CONTRACTORS

14. Milk shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any contract between Milk and the Client.

GENERAL

15.1 The Client shall observe the provisions and requirements of all applicable trade union agreements and shall indemnify Milk against any costs, expenses or loss incurred by it as a result of any failure by the Client to do so.

15.2 Where appropriate and required by Milk (but not otherwise), screen credits shall be given to Milk and nominated individuals for all goods, services or facilities supplied by Milk.

15.3 Headings used in these conditions are purely for ease of reference and do not form any part of or affect the interpretation of these conditions.

15.4 If any provision of this contract as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this contract or the validity or enforceability of this contract generally.

15.5 References to Milk shall, as the context permits, include its licensees, sub-contractors and assigns.

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15.6 The words "include" and "including" shall not be construed restrictively.

LEGAL

16. The contract shall be governed and interpreted exclusively according to the Laws of England and Wales and shall be subject to the jurisdiction of the English and Welsh Courts only.

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