

# Terms & Conditions

**The 'Supplier' shall mean K4 CREATIVE LIMITED**

**The 'Buyer' shall mean the purchaser of the Services (as defined below)**

**The 'Services' shall mean the design and production services to be provided by the Supplier to the Buyer at the request of the Buyer for the purpose of producing the final designs requested by the Buyer and specified in the Supplier's quote referred to in Clause 2 below.**

## APPLICATION OF CONDITIONS

### 1. Application of Conditions

1.1 These Conditions shall govern and be incorporated into every contract for the supply of Services made by or on behalf of the Supplier with the Buyer.

1.2 These Conditions shall apply to the exclusion of and shall prevail over any terms and conditions contained in or referred to in any documentation submitted by the Buyer or in any correspondence or elsewhere or implied by trade custom, practice or course of dealing unless specifically excluded or varied in writing by a director or other authorised representative of the Supplier. Any provisions to the contrary are hereby excluded.

1.3 If, subsequent to any agreement for the supply of Services which is subject to these Conditions, a further agreement for the supply of Services is made with the same Buyer without reference to any conditions of supply, these Conditions shall apply to that further agreement.

## PRICE & PAYMENT

### 2. Price

2.1 Subject to Clause 2.2, the price for the provision of the Services (the "Price") shall be the Supplier's quoted price. All quotes shall be given in writing by the Supplier. All charges to the Buyer made by the Supplier under any agreement to which these Conditions apply are exclusive of VAT which shall be due at the rate ruling on the date of the Supplier's invoice.

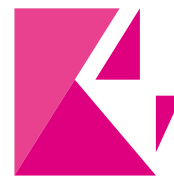
2.2 Any Price quoted to the Buyer shall be by way of estimate only, unless otherwise expressly stated in writing by the Supplier. Although the Supplier gives all quotes in good faith, the Supplier reserves the right to make reasonable revisions to a quote given to the Buyer at any time for any reason. Any such revisions shall be notified to the Buyer in writing by the Supplier. In the event that the Buyer does not accept such revised quotation, the Buyer shall have the right to terminate the agreement to which the quote relates by notifying the Supplier in writing. The Buyer shall then be liable to pay the Supplier on a quantum-meruit basis for all work carried out and expenses incurred on the Buyer's behalf by the Supplier as at the date of receipt of such notification by the Supplier.

2.3 The Price is exclusive of any applicable local taxes which the Buyer shall additionally be liable to pay to the Supplier.

2.4 A separate Price shall be payable by the Buyer to the Supplier for the provision of Services in relation to each final design requested by the Buyer unless otherwise specifically provided for expressly in a quote provided by the Supplier in accordance with this Clause 2.

### 3. Payment

3.1 The Supplier may invoice the Buyer for the Price of the Services and all other amounts owed under these Conditions by the Buyer to the Supplier at the end of each month, for work carried out by the Supplier, on any contract to which the Conditions apply, before or during that month.



3.2 Unless otherwise agreed in writing, the Buyer shall pay the Supplier's invoices in full (without any deduction, set-off or counterclaim) within 30 days of the date of the Supplier's invoice.

3.3 Without prejudice to any rights or remedies available to the Supplier, interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 2% per annum above HSBC PLC's base rate from time to time in force and shall accrue at such a rate after as well as before any judgment. The Buyer shall pay the interest on demand.

3.4 If the Buyer fails to make any payment on the date that payment is due then, without prejudice to any of the Supplier's other rights or available remedies, the Supplier may withhold any or all of the Services to be provided by the Supplier hereunder until all amounts overdue have been paid.

3.5 If, in the Supplier's opinion, the creditworthiness of the Buyer has deteriorated prior to or during performance of the Services, the Supplier may require full or partial payment of the Price prior to commencing or resuming performance of the Services, or may suspend performance altogether.

3.6 As a consequence of the Buyer placing an order for Services with the Supplier, the Supplier may incur expenses. The Supplier may also make commitments and incur expenses with third parties. The Buyer shall be liable to pay for any such expenses incurred by the Supplier on behalf of the Buyer in providing the Services in addition to paying the Price of the Services. In addition, orders for Services may only be cancelled by the Buyer on written notice to the Supplier and on payment to the Supplier of reasonable cancellation charges which take into account expenses incurred and commitments already made by the Supplier on the Buyer's behalf.

#### OBLIGATIONS OF THE BUYER

##### 4. Provision of information by the Buyer

4.1 The Buyer is responsible for providing the Supplier with all necessary information, documents (in whatever form) and instructions to enable the Supplier to provide the Services. The Supplier shall not be liable for any defects in the provision of the Services which are attributable to the Buyer's failure to comply fully with this Clause 4.1.

4.2 If the Supplier incurs any costs as a result of the Buyer's failure to comply with Clause 4.1 the Buyer must pay those costs in addition to the Price.

#### INDEMNITY AND INFRINGEMENT OF THIRD PARTY RIGHTS

##### 5. Third party claims

5.1 The Supplier warrants to the Buyer that in providing the Services it shall not knowingly infringe the rights of any third parties.

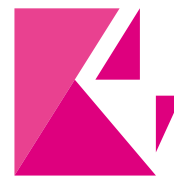
5.2 The Buyer shall keep the Supplier fully indemnified against all losses and all actions, claims, proceedings, costs and damages arising out of any claims made by a third party that the Supplier has infringed that third party's rights, unless the Supplier is in breach of the warranty in paragraph 5.1 hereof.

#### ASSIGNMENT

##### 6. Assignment

6.1 None of the rights or obligations of the Buyer under these Conditions may be assigned or transferred in whole or in part without the prior written consent of the Supplier.

6.2 The Supplier may license or sub-contract all or any part of its rights and obligations under any contract to which these Conditions apply without the Buyer's consent.



## OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

### 7. Intellectual Property

7.1 No right or licence is granted to the Buyer or any other party under any agreement to which these Conditions apply in respect of any patent, trade mark, copyright, registered design right or other intellectual property right of the Supplier or any third party.

7.2 Where any designs or specifications have been supplied by the Buyer to the Supplier then the Buyer warrants that the use of those designs or specifications for the provision of the Services shall not infringe the rights of any third party. The Buyer shall keep the Supplier fully indemnified against all losses and all actions, claims, proceedings, costs and damages arising out of any claims made by a third party that the Supplier has infringed that third party's rights as a result of breach by the Buyer of this Clause 7.2.

7.3 The copyright in any drawings and documents supplied to the Supplier hereunder by or on behalf of the Buyer is deemed to be the property of the Buyer.

7.4 All documents, drawings, programmes, artworks and photomasks generated by the Supplier in providing the Services (the "Works") (and all intellectual property rights therein, of whatever nature and wherever in the world subsisting) shall be owned by and vest in the Supplier unless otherwise expressly agreed in writing between the Supplier and the Buyer. In the event that the Buyer shall own the intellectual property rights in any Works by virtue of such express agreement with the Supplier, the Buyer agrees that the Supplier may reproduce those Works for the purposes of the Supplier's own publicity without further reference to the Buyer.

7.5 All information provided by the Buyer to the Supplier in connection with the provision of the Services which the Buyer informs the Supplier is confidential and/or commercially sensitive shall be treated as and kept confidential by the Supplier. References to "information" in this Clause 7.5 shall include information provided by employees, contractors, agents, representatives or advisers of the Buyer, or information which is obtained by the Supplier through observation during visits to any of the Buyer's premises or those of the Buyer's agents, representatives or advisers and whether such information is received orally or in writing or by any other means.

7.6 The Buyer acknowledges that in providing the Services the Supplier may have to enter into agreements in relation to works in which third parties ("Third Parties") own the intellectual property rights ("Third Party Works") to enable the Supplier and the Buyer to make use of Third Party Works in connection with a design or designs provided by the Supplier to the Buyer. The Buyer agrees to use Third Party Works only in a way which is consistent with the rights or permission granted to the Supplier by Third Parties and of which the Supplier shall inform the Buyer. The Buyer shall keep the Supplier fully indemnified against all losses and all actions, claims, proceedings, costs and damages arising out of any claims made by Third Parties that the Supplier has infringed those Third Parties' rights as a result of breach by the Buyer of this Clause 7.6.

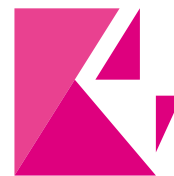
7.7 The Supplier hereby asserts all its moral rights under the Copyright, Designs and Patents Act 1988 including the right to be identified as the creator of all works created by it in providing the Services.

7.8 Neither party shall be liable for any delay in performance or failure to perform any of its obligations under any agreement to which these Conditions apply insofar as the delay or failure is due to any event beyond the reasonable control of that party.

## TIME OF THE ESSENCE

### 8. Time of the Essence

8.1 Time of payment of all monies payable by the Buyer to the Supplier shall be of the essence for all agreements between the Buyer and the Supplier to which these Conditions apply.



8.2 The Supplier will use all reasonable endeavours to perform the Services by any specified or requested date, but each date is to be treated as an estimate only. The Supplier shall not be liable for any delay in the performance of the Services including for any delay caused by any of the Supplier's sub-contractors, agents or suppliers. Time for performance shall not be of the essence of any agreement to which these Conditions apply and shall not be made so by the service of any notice. Any delay in the provision of the Services will not entitle the Buyer to reject the Services, to terminate any agreement to which these Conditions apply, or to withhold payment or make late payment of any sums due to the Supplier under these Conditions or any agreement to which these Conditions apply.

## BREACH OF CONTRACT

### 9. Liability of the Supplier

In the event of breach by the Supplier of any of the provisions of these Conditions or of any agreement to which these Conditions apply the liability of the Supplier shall be limited to the extent that it is covered by any insurance policy taken out by the Supplier and operative at the time the liability accrues. In the event that the Supplier's liability is not covered by any insurance policy, the Supplier's liability shall be limited to the Price of the Services. The Supplier shall not be liable for any consequential or indirect loss (such as loss of profits or loss of contracts) suffered by the Buyer

## GOVERNING LAW

### 10. Governing Law

10.1 Any contract to which these Conditions apply shall be governed by and construed in accordance with the Laws of England and Wales.

10.2 All disputes arising out of any agreement to which these Conditions apply shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

## CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

### 11. Contracts (Rights of Third Parties) Act 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement is not intended to, and does not, give any person who is not a party to it, any right to enforce any of its provisions.

## GENERAL PRINCIPLES OF LAW

### 12. Force Majeure

### 13. Termination

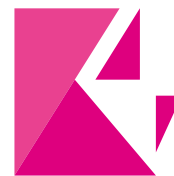
13.1 The Supplier may terminate any agreement with the Buyer to which these Conditions apply immediately by giving notice in writing to the Buyer if:

13.1.1 the Buyer ceases or threatens to cease to carry on business;

13.1.2 the Buyer has a receiver or administrative receiver appointed, passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction makes an order to that effect, becomes subject to an administration order, enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business or if any national or local law equivalent of any of the foregoing occurs;

13.1.3 the Buyer fails to pay on its due date, or within any agreed period of grace, any sum due in accordance with these Conditions or under any other agreement with the Supplier;

13.1.4 the Buyer commits a material breach of any term of these Conditions or of any agreement to which these Conditions apply which, in the case of a breach capable of being remedied, is not remedied within 14 days of the date of a written request to do so;



13.1.5 the Buyer exceeds its credit limit with the Supplier; or

13.1.6 the Supplier reasonably apprehends that any of the above is about to occur and notifies the Buyer in writing.

13.2 If any agreement to which these Conditions apply is terminated under this Clause 13 and the Services have been delivered but not paid for, the Price of the Services and all other amounts owed under these Conditions or any agreement to which these Conditions apply by the Buyer to the Supplier shall become immediately payable notwithstanding any previous agreement to the contrary. Where the Supplier is still in the process of providing the Services, the Buyer shall be liable to pay the Supplier immediately on a quantum-meruit basis for all work carried out and for all expenses incurred by the Supplier on the Buyer's behalf in connection with the provision of the Services as at the date of termination.

13.3 Termination of these Conditions shall not affect any of the accrued rights or liabilities of the Supplier or the Buyer or affect the coming into force or the continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after termination.

#### 14. Headings

The headings of these Conditions are for convenience only and do not affect the interpretation or construction of these Conditions.

#### 15. Severability

If any provision of these Conditions is held by any competent authority to be invalid, illegal or unenforceable in whole or in part such invalidity, illegality or unenforceability shall not affect the other provisions of these Conditions which shall remain in full force and effect. The parties shall attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

#### 16. Waiver

No failure or delay by either party to exercise any right or remedy under these Conditions shall be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy preclude the further exercise of that right or remedy. No waiver by either party of any breach of these Conditions shall be considered as a waiver of a preceding or subsequent breach. The rights and remedies provided in these Conditions are cumulative and are not exclusive of any rights or remedies provided by law.

#### 17. Notices

All notices which are required to be given under these Conditions shall be in writing and shall be delivered personally, or sent by prepaid first class post (airmail if to an address outside the United Kingdom) or facsimile transmission to the party concerned whether this loss arises from a breach of duty in the law of contract or tort or in any other way (including loss arising from the Supplier's negligence to the full extent such liability may be excluded in law) at its last known address. Notice delivered personally shall be deemed to have been served, when delivered, and notice sent by first class post shall be deemed to have been served 48 hours after despatch (seven days if given by airmail), and notices sent by facsimile shall be deemed to have been served on the date of despatch.

#### 18. Variation

No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Supplier