

Terms and Conditions of Business of The House Ltd – Supply of Services by thehouse Ltd

We are delighted that you have chosen The House Ltd (thehouse) to work with your business. Set out below are the terms and conditions upon which thehouse is happy to act on your behalf and you should contact us for clarification if you have any queries. Your continued instructions to us will be deemed acceptance of these terms.

The Project:

1. A project plan will be drawn up between thehouse and you the client ("Project Plan"), the details of which will be set out in a separate letter or contract and which will be subject to these terms and conditions. Once the Project Plan has been agreed, any subsequent amendments must be put in writing if they are to be valid.

Your Cooperation:

You will appreciate that in order for thehouse to provide you the client with the high standard of service you expect from us, it is vital that you help us to achieve this. Therefore you agree to supply thehouse with all information, sample products and materials requested of you, in good time.

2. thehouse shall use reasonable endeavours to meet any performance dates or milestones specified in the Project Plan. These dates will be estimates only and time for performance by thehouse shall not be of the essence of this agreement.
3. You the client agree to cooperate with us as regards the services to be provided by us under the Project Plan ("the Services") and if appropriate to appoint a client manager who will have contractual authority in all matters to bind you on matters relating to the Services and the Project Plan.
4. You agree to provide us, our agents, subcontractors, consultants access to data, premises, accommodation and any other facilities reasonably required by us promptly and at no charge.
5. You agree to provide us with any input material or other information required by us, promptly and at no charge. You also agree to ensure that it is accurate.
6. You agree to provide us with your prompt instructions and approval (or reason for non-approval) of all drafts, artwork, textual proofs or other documents ("the Drafts") given by us to you for approval under the Project Plan.
7. Where you approve the Drafts, this will be conclusive and binding upon you. If you subsequently change your decision or wish to further amend the Drafts, we will of course use our reasonable endeavours to accommodate this. We cannot guarantee that such amendments can be made, but if they are, you accept that this will be at additional cost to you.
8. You agree to supply us with all health and safety rules and regulations, risk assessments and any another reasonable security requirements that apply to any of your premises at which thehouse staff, agents, subcontractors or consultants may work.
9. If our staff, agents, subcontractors, or consultants leave any equipment at your premises you undertake not to dispose of this and to maintain the same in good condition.

Delay:

10. If we are prevented from performing our obligations, or delayed from doing so by you, your agents, subcontractors, consultants or employees, we do not accept liability for any costs, charges or losses incurred by you as a result of that delay.
11. You accept liability to thehouse and agree to pay all reasonable costs, charges or losses incurred by us which are caused directly or indirectly by any fraud, negligence or failure to perform or delay in the performance of any of your obligations.

Charges and Payment:

12. It is the policy of thehouse to request a retainer fee at the outset and you agree to pay this immediately upon request.
13. thehouse adopts a practice of agreeing a clear remuneration structure with you the client at an early stage. We will write to you separately with a written quotation or estimate for the cost of any Project Plan or Services. Included in our fees is the cost of management time and creative concept development. Unless specifically stated in our quotation or estimate, the following costs will be in addition to any quotation provided or agreed fee: all production aspects, creative execution, colour visuals, creative direction, artwork and any other goods or services commissioned by thehouse on your behalf.
14. You agree to pay thehouse's charges as specified in the written quotation in consideration of the provision of the Services by us.

15. Prompt payment of our fees, expenses and any other sums payable by you would be very much appreciated. In any event we request payment by no later than 30 days of the date of each invoice or demand issued by us and reserve the right (without prejudice to any other remedy that we may have) to charge interest at the rate of 5% per annum over the National Westminster Bank Plc base rate from time to time and to suspend all the Services until payment has been made in full.
16. Time for payment shall be of the essence of this agreement.
17. All sums payable to thehouse shall become due immediately on termination of the agreement and we may set off any liability of you to us against any liability from us to you.
18. Any fixed price or quotation provided to you will exclude VAT, which we shall add to our invoices at the appropriate rate.
19. Any fixed price contained in our agreement or quotation excludes the cost of hotel, subsistence, travelling and any other additional expenses reasonably incurred by thehouse or the individuals whom we engage in connection with the Services and the Project Plan, the cost of any materials and the cost of services reasonably and properly provided by any third parties and required by you for the supply of the Services. We shall invoice these expenses, materials and third party services separately.
20. Travelling expenses will be charged by us at the AA quoted mileage rates, and appropriate rail fares, business class air fares or equivalent depending on the form of transport used. You agree to pay the cost of taxis, bikes and courier services used in connection with the Services and Project Plan. Office charges such as photocopying, postage, telephone and secretarial services will not be charged by us separately except where these arise from the promotional work in respect of the Services or Project Plan in which case you agree to pay these separately.
21. You will appreciate that all quotations and costs estimates provided by thehouse are prepared in good faith and on the basis of the information available to us at the time of quotation. We will use our best endeavours to honour any quotations or estimates given. However, we do reserve the right to vary or amend our charges, provided we give you advance notice of this, to reflect any increases in the costs of supplying the Services (for example for the cost of raw materials or products), exchange rate variations, or other costs beyond our control.

Licences and consents:

22. You acknowledge the importance of ensuring that all images, designs, and trademarks passed by you to us actually belong to you, or alternatively that you have the relevant authority from any third party to use them. You undertake that all images, photographs, trademarks and designs and trademarks given to thehouse by you, are so authorised.
23. You agree to obtain and maintain all necessary licences and consents and to comply with all relevant legislation in relation to the Services, the installation of thehouse's equipment, and the use of in-put material before the date on which the Services are to start. This includes obtaining permission from any third party to use any images, photographs, trademarks or designs belonging to the third party.
24. In the event that you supply us with any images, photographs, trademarks, designs or any other items the use for which permission is required by a third party but you have not obtained that permission, you agree that you will be liable to thehouse and to any third party for payment of any claim for compensation, losses, costs or charges claimed. You also agree to indemnify thehouse against any such claims made directly against thehouse by any third party as a result of your failure to obtain any relevant permission, licence or other consent.

Intellectual Property Rights:

25. As between thehouse and you the client, all Intellectual Property Rights and all of the rights in the Brand Products and the Pre-existing Materials (as defined in the Schedule below) shall be owned by thehouse. Except where thehouse does not own any of the Pre-existing Materials, we license all rights to you the client free of charge and on a non exclusive worldwide basis to such extent as is necessary to enable you to make reasonable use of the Brand Products and the Services. If this agreement is terminated this licence will automatically terminate.
26. All Intellectual Property Rights including but not limited to copyright in artwork, designs, brochures, catalogues, posters and other work of whatever nature created by us in relation to the Project Plan ("the Works") shall be the property of thehouse. We hereby assign to you any Intellectual Property Rights we may have in the Works subject to receiving payment from you of all invoices in relation to the Project Plan by the due date. You are permitted to use the Works for the purpose for which the Project Plan was requested until payment in full of all invoices under the Project Plan. Failure by you to make any payment will result in termination of this right.
27. You acknowledge that where thehouse does not own any of the Pre-existing Materials, your use of rights in the Pre-existing Materials is conditional upon us obtaining a written licence from any relevant third party which will entitle us to license the rights to you.

Copyright:

28. thehouse acknowledges that all data, information, designs, logos and artwork provided by you, the client to thehouse in relation to the Project Plan ("Your Material") shall remain your property.
29. You grant thehouse the right to use Your Material in carrying out the Project Plan and the Services.
30. You give a warranty that all material (including Your Material) provided by you, your staff, agents, subcontractors, or consultants to thehouse is your own original material and that thehouse's use of it in relation to the Project Plan or Services will not infringe any third party rights.
31. You agree to indemnify thehouse against all actions, claims, proceedings, costs or damages resulting from any breach on your part of the warranty at clause 31 against any claim brought by a third party against thehouse.

Confidentiality:

32. We understand the importance of keeping confidential the nature of the work we undertake on your behalf, and we ask that you in turn acknowledge the importance to us of keeping confidential the processes, tools and building brands used by us.
33. It is thehouse's policy to ask all our staff, agents, consultants and subcontractors to sign a confidentiality clause when undertaking work on our behalf. We trust that you will require your staff, agents, consultants and subcontractors to do likewise, and we reserve the right to withdraw from the agreement if we feel that if we consider this duty is not being complied with.
34. We thehouse and you the client agree that we shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, tools or initiatives which are of a confidential nature and have been disclosed to you by us, or to us by you, our respective employees, agents, consultants or subcontractors and any other confidential information concerning our businesses or products which the other party may obtain.
35. We both agree that we may disclose information to our respective employees, officers, representatives, advisors, agents or subcontractors that they need to know in order to carry out obligations under the agreement.
36. We both agree to take all reasonable steps to ensure that our respective employees, officers, representatives, advisors, agents or subcontractors to whom we disclose confidential information will comply with the duty of confidentiality.

Force Majeure Events preventing performance:

37. You agree that thehouse shall not be in breach of this agreement nor any of its duties to you, nor liable for any failure or delay in performance of any obligations under this agreement arising from acts beyond its reasonable control (a "Force Majeure Event" as defined in the Schedule below).
38. In the event of a Force Majeure Event occurring we agree promptly to notify you in writing of the nature and extent of the incident causing the failure or delay in performance.
39. We of course undertake to use all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out our obligations under this agreement in any way that is reasonably practicable and to resume the performance of our obligations as soon as reasonably possible.
40. If the Force Majeure Event prevails for a continuous period of more than 28 days, either party may terminate this agreement by giving at least 7 days' written notice to the other party. On the expiry of this notice period, this agreement will terminate. Any such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to termination.

Data Protection:

41. You acknowledge and agree that your data will be retained and that we may use information held about you and your staff for the purposes of direct marketing by post, telephone, fax and e-mail. You undertake to notify us in writing if this consent is withdrawn following termination of the Services.

Limitation of liability – please read this section carefully:

This section sets out our entire financial liability to you in respect of any breach of this agreement, any use made by you of the Services, and any representation, statement or negligent act or omission arising under or in connection with this agreement. However nothing in this clause limits or excludes our liability to you for death or personal injury resulting from our negligence or any damage or liability incurred by you as a result of fraud or fraudulent misrepresentation by us.

42. We shall not be liable for loss of profits, loss of business, loss of goodwill and/or similar losses, loss of or corruption of data or information, any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses. You agree that our

total liability in connection with the performance or contemplated performance of the Services shall be limited to the price paid by you for the Services.

Termination of the agreement:

43. This agreement shall terminate on completion of the Services.
44. Either party may terminate this agreement without liability to the other on giving the other not less than 28 days' written notice. This is without prejudice to any other rights or remedies that the parties may have.
45. Thehouse may terminate the agreement immediately if you fail to pay any sums due to us under this agreement on the due payment date, or you breach of any of the terms of this agreement and fail to remedy the breach within 28 of us requiring you to do so. A breach of clauses 2, 5, 9, 15, 16, 24, 31, 34, 35 and 37 (payment of charges, performance of obligations and duty of confidentiality) shall be deemed not capable of remedy.
46. The agreement will terminate if you become insolvent or go into liquidation or become bankrupt, whether or not a receiver or administrator is appointed.
47. Upon termination of this agreement you agree to immediately pay to thehouse all outstanding unpaid invoices plus any interest or charges and, in respect of the Services supplied but for which no invoice has been submitted, thehouse may submit an invoice, which you agree to pay promptly.
48. You agree to return promptly all thehouse's equipment and Pre-existing Materials on termination, failing which we have your authority to enter the premises where they are kept and take possession of them. You will be solely responsible for their safe keeping until their return to us.
49. You agree not to attempt to employ any of thehouse's staff who have worked upon the provision of the Services to you within 12 months after completion of the Project Plan, without the written consent of thehouse.

Severance:

50. If any clause in this agreement is found by any court or other relevant authority to be invalid, illegal or unenforceable, that clause shall not form part of the agreement, and the validity and enforceability of the other clauses in the agreement shall not be affected.

The Schedule

Definitions:

"Brand Products": All documents, products and materials developed by thehouse or its agents, subcontractors, consultants and employees in relation to the Project Plan or the Services in any form, including computer programmes, data, reports and specifications and drafts.

"Force Majeure Event": Any acts, events, omissions or accidents beyond thehouse's reasonable control including but not limited to any act of God, fire, flood, earthquake, windstorm or other natural disaster, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions, terrorist attack, civil war, civil commotion or riots, nuclear, chemical or biological contamination or sonic boom, explosion or accidental damage, loss at sea, adverse weather conditions, collapse of building structures, failure of plant machinery, machinery, computers or vehicles, any labour dispute, including but not limited to strikes, industrial action or lockouts, non-performance by our suppliers or subcontractors, and interruption or failure of a utility service, including but not limited to electric power, gas or water.

"Intellectual Property Rights": all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Pre-existing Materials": All documents, information and materials provided by thehouse relating to the Project Plan or the Services which existed prior to the commencement of the agreement, including the agreement between thehouse and the client, including computer programmes, data, reports and specifications, designs and images.

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