



TERMS AND CONDITIONS OF BUSINESS

The Customer's attention is particularly drawn to the provisions of clause 13.

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

"Artworks" the artworks, graphics and related goods (or any part of them) supplied by the Supplier to the Customer pursuant to an Order as set out in the Artworks Specification;

"Artworks Specification" any specification for the Artworks, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier;

"Business Day" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"Conditions" these terms and conditions as amended from time to time in accordance with clause 16.7;

"Contract" the contract between the Supplier and the Customer for the supply of Artworks and/or Services in accordance with these Conditions and including the Artworks Specification and Service Specification (as the case may be);

"Customer" the person or firm who purchases the Artworks and/or Services from the Supplier;

"Customer Background IPRS" all Intellectual Property Rights in all materials, equipment, drawings, specification and data supplied by the Customer to the Supplier;

"Force Majeure Event" has the meaning given to it in clause 15.1;

"Intellectual Property Rights" patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Order" the Customer's order for the supply of Artworks and/or Services, as set out in the Customer's written acceptance of the Supplier's quotation;

"Services" the services, including the Artworks (where applicable), supplied by the Supplier to the Customer pursuant to an Order and as set out in the Service Specification;

"Service Specification" the description or specification for the Services provided in writing by the Supplier to the Customer;

"Supplier" Enigma Visual Solutions Limited registered in England and Wales with company number 03486855 and being ISO accredited under BS EN ISO 9001:2008, ISO OHSAS 18001: 2007, BS EN ISO 14001:2004 and ISO 20121: 2012.

"Supplier Background IPR's" all Intellectual Property Rights in the Supplier Materials and in all other materials, equipment, drawings, specifications and data supplied by the Supplier to the Customer; and

"Supplier Materials" has the meaning set out in clause 8.1.6.

1.2 **"Construction"**. In these Conditions, the following rules apply:

1.2.1 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted provided that no party shall incur a



greater liability hereunder than would have been the case but for such amendment, re-enactment or subordinate legislation;

1.2.3 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.4 a reference to **writing** or **written** includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Artworks and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.

2.3 The Contract constitutes the entire agreement between the parties. Both parties acknowledge that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party which is not set out in the Contract.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Artworks and Services except where application to one or the other is specified.

3. ARTWORKS

3.1 The Artworks are described in the Artworks Specification.

3.2 To the extent that the Artworks are to be created in accordance with an Artworks Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Artworks Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier shall consult with the Customer in relation to amending the Artworks Specification if this is required by an applicable statutory or regulatory requirements.

4. DELIVERY OF ARTWORKS

4.1 The Supplier shall ensure that each delivery of the Artworks is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Artworks (including the code number of the Artworks, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Artworks remaining to be delivered.

4.2 The Supplier shall deliver the Artworks:

4.2.1 within three Business Days of the delivery date specified in the Order, or if no such date is specified, at any time after the Supplier notifies the Customer that the Artworks are ready; and

4.2.2 to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**"),

provided that the Supplier shall not be liable for any delay in delivery of the Artworks that is caused by a Force Majeure Event or the Customer's failure to pay the Supplier's invoice pursuant to clause 9.5 (where



- applicable), or to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Artworks.
- 4.3 Delivery of the Artworks shall be completed on the Artworks' arrival at the Delivery Location.
- 4.4 If the Customer fails to accept or take delivery of the Artworks within five Business Days of the date specified in the Order or the Supplier notifying the Customer that the Artworks are ready (as the case may be), then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Artworks:
- 4.4.1 delivery of the Artworks shall be deemed to have been completed at 9.00 am on the sixth Business Day following the date specified in the Order or the day on which the Supplier notified the Customer that the Artworks were ready (as the case may be); and
- 4.4.2 the Supplier shall store the Artworks until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.5 If ten Business Days after the date specified in the Order or the Supplier notifying the Customer that the Artworks were ready for delivery (as the case may be) the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Artworks and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Artworks or charge the Customer for any shortfall below the price of the Artworks.
- 4.6 The Supplier may deliver the Artworks by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.7 If requested to do so by the Customer, the Supplier shall deliver the Artworks outside of the United Kingdom provided that:
- 4.7.1 the Customer (unless otherwise specified in the Artworks Specification) shall be responsible for transport costs (including insurance), import duties and taxes;
- 4.7.2 the Customer shall comply with all applicable laws and regulations of the country to which the Artworks are being delivered and the Supplier will not be responsible or liable for any breach of any such law; and
- 4.7.3 the Supplier in no way guarantees that the Artworks will arrive at their destination in the same condition that they were despatched should the Artworks be subject to opening and inspection by customs authorities.

5. QUALITY OF ARTWORKS

- 5.1 The Supplier warrants that on delivery the Artworks shall:
- 5.1.1 conform in all material respects with their description and the Artworks Specification;
- 5.1.2 be free from material defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 Subject to clause 5.3, if:
- 5.2.1 the Customer gives notice in writing within five Business Days of delivery of the Artworks that some or all of the Artworks do not comply with the warranty set out in clause 5.1;
- 5.2.2 the Supplier is given a reasonable opportunity of examining such Artworks; and
- 5.2.3 the Customer (if asked to do so by the Supplier) returns such Artworks to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Artworks, or refund the price of the defective Artworks in full.



- 5.3 The Supplier shall not be liable for the Artworks' failure to comply with the warranty in clause 5.1 if:
 - 5.3.1 the Customer makes any further use of such Artworks after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Artworks or (if there are none) good trade practice;
 - 5.3.3 the defect arises as a result of the Supplier following any drawing, design or Artworks Specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Artworks without the written consent of the Supplier;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 5.3.6 the Artworks differ from the Artworks Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Artworks' failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Artworks supplied by the Supplier under clause 5.2.

6. TITLE AND RISK

6.1 The risk in the Artworks shall pass to the Customer on completion of delivery. Installation and assembly of the Artworks shall be the sole risk and responsibility of the Customer except where it is specifically agreed to be the responsibility of the Supplier in the Artworks Specification.

6.2 Title to the Artworks shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Artworks .

6.3 Until title to the Artworks has passed to the Customer, the Customer shall:

- 6.3.1 store the Artworks separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Artworks;
- 6.3.3 maintain the Artworks in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.10; and
- 6.3.5 give the Supplier such information relating to the Artworks as the Supplier may require from time to time.

6.4 If before title to the Artworks passes to the Customer the Customer becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.10, then, without limiting any other right or remedy the Supplier may have:

- 6.4.1 the Customer's right to use the Artworks in the ordinary course of its business ceases immediately; and
- 6.4.2 the Supplier may at any time:
 - a. require the Customer to deliver up all Artworks in its possession which have not been irrevocably incorporated into another product; and
 - b. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Artworks are stored in order to recover them.



7. SUPPLY OF SERVICES

- 7.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall meet any performance dates for the Services specified in the Service Specification provided that the Supplier shall not be liable for any delay in delivery of the Services that is caused by a Force Majeure Event or the Customer's failure to pay the Supplier's invoice pursuant to clause 9.5 (where applicable).
- 7.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall:
 - 8.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Artworks Specification or the Service Specification are complete and accurate;
 - 8.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 8.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - 8.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 8.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - 8.1.6 keep and maintain all materials, equipment, documents and other property of the Supplier ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 8.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
 - 8.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 8.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - 8.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. CHARGES AND PAYMENT

- 9.1 The price for Artworks shall be the price set out in the Order. The price of the Artworks is inclusive of all costs and charges of packaging, insurance, transport of the Artworks (unless clause 4.7 applies).
- 9.2 The charges for Services shall be on a time and materials basis:



- 9.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Service Specification;
 - 9.2.2 the Supplier's standard daily fee rates for each individual person are calculated as set out in the Service Specification;
 - 9.2.3 the Supplier shall be entitled to charge an overtime rate as set out in the Service Specification; and
 - 9.2.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 9.3 The Supplier reserves the right to:
- 9.3.1 increase its daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within two weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the Contract by giving one weeks' written notice to the Customer; and
 - 9.3.2 increase the price of the Artworks, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Artworks to the Supplier that is due to:
 - a. any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - b. any request by the Customer to change the delivery date(s), quantities or types of Artworks ordered, or the Artworks Specification; or
 - c. any delay caused by any instructions of the Customer in respect of the Artworks or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Artworks.
- 9.4 Subject to the Supplier agreeing otherwise in writing, the Supplier shall invoice the Customer:
- 9.4.1 in respect of Artworks or Services (as applicable) for which the fixed fee (in respect of the Artworks) or for which the Supplier has quoted £5,000 plus VAT (as defined in clause 9.77) (in respect of the Services) or more:
 - a. 50 per cent of its fee at any time after the Contract has commenced and before the Supplier commences (or is obliged to commence) providing the Artworks or Services (as applicable); and
 - b. in respect of the remaining fees, on or at any time after completion of delivery (in respect of the Artworks) and monthly in arrears (in respect of the Services); and
 - 9.4.2 in respect of Artworks or Services (as applicable) for which the fixed fee (in respect of the Artworks) or for which the Supplier has quoted less than £5,000 plus VAT (in respect of the Services), on or at any time after completion of delivery (in respect of the Artworks) and monthly in arrears (in respect of the Services).
- 9.5 Subject to the Supplier agreeing otherwise in writing, the Customer shall pay each invoice submitted by the Supplier in full and in cleared funds to a bank account nominated in writing by the Supplier within 30 days of the date of the invoice, and, where clause 9.4.1a applies, prior to the commencement of the Supplier providing the Artworks or the Services (as the case may be). Time for payment shall be of the essence of the Contract.



- 9.6 Where clause 9.4.1 applies, the Supplier shall in no circumstances be required to commence providing the Artworks or the Services (as the case may be) until the Customer has paid the Supplier's invoice pursuant to clause 9.4.1a and in accordance with clause 9.5.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Artworks at the same time as payment is due for the supply of the Services or Artworks.
- 9.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 9.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 The Supplier and its licensors shall retain ownership of all Supplier Background IPRs and the Customer and its licensors shall retain ownership of all Customer Background IPRs.
- 10.2 All Intellectual Property Rights (excluding the Customer Background IPRs) in or arising out of or in connection with the Artworks or the Services shall be owned by the Supplier.
- 10.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Artworks or the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.4 All Supplier Materials are the exclusive property of the Supplier.
- 10.5 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty free, non-transferable licence to use the Customer Background IPRs for the term of the Contract for the purposes of providing the Services and Artworks to the Customer in accordance with this Contract.

11. HANDLING OF CUSTOMER GOODS

- 11.1 The Supplier may (at its absolute discretion) agree to transport materials and equipment owned or in the possession of the Customer (the "**Customer Goods**") to the Delivery Location (as defined in clause 4.2.2) provided that:
- 11.1.1 the Customer insures the Customer Goods whilst they are in the possession of the Supplier, including but not limited to the transport of the Customer Goods to the Delivery Location;
 - 11.1.2 the Customer Goods are at all times at the sole risk and responsibility of the Customer;
 - 11.1.3 the Customer warrants that it owns, leases or otherwise has good title to the Customer Goods; and
 - 11.1.4 the Supplier may charge for the transport of the Customer Goods to the Delivery Location at a fee notified to the Customer in writing and paid by the Customer in accordance with clause 9.



12. CONFIDENTIALITY

A party (“**receiving party**”) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (“**disclosing party**”), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

13. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 13.1.2 fraud or fraudulent misrepresentation;
- 13.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 13.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 13.1.5 defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1:

- 13.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
- 13.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total paid by the Customer to the Supplier pursuant to the Contract.

13.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.4 This clause 13 shall survive termination of the Contract.

14. TERMINATION

14.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than one months' written notice.

14.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 14.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing to do so;
- 14.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability



- partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 14.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - 14.2.5 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 14.2.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
 - 14.2.7 the holder of a qualifying charge over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
 - 14.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 14.2.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.2 to clause 14.2.8 (inclusive); or
 - 14.2.10 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 14.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
 - 14.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Artworks under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.10, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
 - 14.5 On termination of the Contract for any reason:
 - 14.5.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 14.5.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 14.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and



14.5.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. FORCE MAJEURE

15.1 For the purposes of this Contract, **"Force Majeure Event"** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2 A party (the **"Affected Party"**) shall not be liable to the other party as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event provided that the Affected Party shall, as soon as reasonably practicable after the start of the Force Majeure Event, and in any event, within 5 Business Days from its start, notify the other party of the Force Majeure Event, the date it started, its likely duration and its effect on its ability to perform its obligations under the Contract; and use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.3 If the Force Majeure Event prevents the Affected Party from providing any of the Services and/or Artworks for more than four weeks, the party not affected by the Force Majeure Event may terminate this Contract by giving one week's written notice to the Affected Party.

16. GENERAL

16.1 Assignment and other dealings.

Each party shall not, without the prior written consent of the other party, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

16.2 Notices.

16.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

16.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the party's address as notified to the other party in writing; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

16.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3 Severance.

16.3.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and



enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 16.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 16.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 16.9 **Jurisdiction** Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).