

JAZZBONES CREATIVE

STANDARD TERMS AND CONDITIONS

1. Contract Terms

1.1 We agree to provide our services to you on the following terms and conditions. These constitute a contract between us and you and must be read together with the specification and any other documents explicitly agreed to be part of this contract. Any other terms and conditions contained in any other document are excluded unless their inclusion is expressly agreed in writing.

1.2 In these terms and conditions:

1.2.1 "we" and "us" means Jazzbones Creative Limited a company registered in England under number 6586564; and

1.2.2 the "**Services**" means the services that you have ordered from us from time to time.

2. Account Manager

During the term of this Agreement, we shall provide a designated account manager ("**the Account Manager**") who shall have overall responsibility for the management, coordination, and delivery of the Services. The Account Manager shall also have responsibility for monitoring the Services. The Account Manager shall meet regularly with your designated representative as well as your other designated personnel in order to review our performance under this Agreement.

3. Terms relating to printed material

3.1 Unless otherwise stated, the price quoted by us to you is for delivery of our materials to your address set out in our estimates or quotation. We reserve the right to make an additional charge for extra costs involved in delivery to a different address.

3.2 All materials will remain our property until payment has been received in full by us from you. We shall have a general lien on your goods in our possession if you do not pay us in full.

3.3 You are responsible for obtaining all necessary authority to reproduce pictures, artwork, photographs or any other material that you may provide us. You agree to indemnify us against all loss or damage that we may suffer if you have not done this properly.

3.4 You are responsible for keeping a copy of all materials by us in case you wish us to carry out additional materials on it in the future.

3.5 It is in your interests to ensure that photographs are of the highest quality. We will do the best that we can with material that you supply to us but we shall not be responsible for any unsatisfactory results caused by unsuitable or inferior photographic originals.

3.6 We reserve the right not to perform the Services for you if we reasonably believe that it is of an illegal or libellous nature or an infringement of copyright (or other rights) belonging to a third party.

3.7 You will be asked to approve all proof materials (ie PDF's or Hard Copy runouts) in writing before we create final artwork and disks. We shall not be held responsible for any errors that are not notified to us at this point.

4. Terms relating to websites

4.1 You agree to check all information as to prices contained in your website and agree that it is your sole responsibility to ensure that all prices and rates are from time to time accurate. You accept that all orders received by it through the website shall be considered solely as transactions between yourself and your own customers and agree that we shall not be responsible in any way for any matters arising from any such orders.

4.2 Unless otherwise agreed, you allow to be shown the bottom of each page of your website and will not remove the words "Designed by Jazzbones Creative" accompanied by a clickable hyperlink to our own website.

4.3 A copy of your website will be posted on a test platform. It is your responsibility to check the site thoroughly and ensure all copy, pictures and functionality (ie forms etc) are working correctly. We will only make the site live on written approval. We allow a period of 10 working days for bug fixes and minor alterations. After this period all work carried out on the website will be charged at our standard rates.

5. Terms relating to video productions

5.1 We will undertake the materials in accordance to the technical and creative specification agreed at the beginning of the project.

5.2 Filming

All filming will be undertaken on the understanding that our crew will have access to the people required and relevant areas which will have been prepared beforehand.

5.3 Footage

All footage from a film shot will remain our property until the total amount for the materials has been paid in full. All footage will be stored and edited at our studios and will remain our responsibility throughout the job. At the end of the job, we will, if so asked provide the tapes to you (unless storage is required for future edits).

5.4 Script

Filming, programming and production will be undertaken with reference to an agreed script and storyboard. Any changes to the agreed script during the course of the project which involve extra filming or programming will be charged at our standard rates.

5.5 *Editing, graphical overlays, programming, encoding and reconfiguring*

- (a) Any technical glitches which arise during production of a DVD or CD-ROM will be addressed and secured by us. Any technical changes required after you have signed off the project will be charged at our normal rate.
- (b) Any creative changes which are required after you have seen the finished product which deviate from the original or agreed script and agreed film shoot will be charged at our normal rate.

5.6 *Credits*

All materials created by us will be credited as such at the end of a film production, and on the sleeve of the DVD or in the contents of a CD-ROM presentation.

5.7 If your project involves the use of music you accept that this music must be cleared for copyright with the relevant authority and the ensuring licence fees paid. Music copyright is laid out within the job specification. Royalty free music can be provided by us for you.

5.8 Where permissions are required to film in certain locations you bear responsibility for ensuring that all relevant agencies have been consulted and permissions have been sought, except where it is specifically laid out in the job specification that we will manage this process. In addition, you agree to gain permission and consent from all people to be involved with the video and agree to indemnify us against all charges arising from issues of access, permission, consent or clearance.

5.9 Unless otherwise agreed, we reserve the right to add the words "Produced by Jazzbones Creative" and our logo to the end of the video.

5.10 You allow us to use and refer to your video for promotional purposes, and as an example of a video which we have created.

5.11 In the case of cancellation 7-10 days before filming (or photography) is due to start, 25% of the contract value will be charged. Where a booking is cancelled 3-7 days before filming, 50% will be charged. Cancellation 1-3 days in advance will incur a charge of 100% of the contract value. In addition we retain the right to charge for all materials already carried out. This includes cancellation for reasons beyond our control such as weather or withdrawal of permission by landowners.

5.12 Some Services are provided by third parties, and therefore we are unable to cancel any remaining portion of Services which you ask us to end before their agreed termination time.

6. Services

Any dates quoted for the provision of the Services are approximate only and we shall not be liable for any delay in relation to the same howsoever caused.

7. Payment

- 7.1 You must pay the charges which we have agreed for the Services. When we make a change to those charges or rates we will notify you before we start any materials for you.
- 7.2 You also agree to pay our expenses in respect of creative teams, voiceover, sound studio, stock imagery and stock audio fees.
- 7.3 Our terms of payment for all charges are 30 days after your receipt of our invoice.
- 7.4 Unless agreed otherwise, all charges for the Services are exclusive of any applicable value added or other tax, which will be added to our invoices sent to you.

8. Your Obligations

You agree that you will:

- 8.1 ensure that your employees co-operate fully with us in relation to the provision of the Services; and
- 8.2 promptly give us such assistance, information and documents as we may reasonably require for the proper and efficient provision of the Services.

9. Confidentiality

We agreed to keep confidential any information that you tell us about your business and future plans and any other matter which either you say is confidential or which is clearly confidential. You agree to keep confidential anything that we say is confidential (including our methods of working).

10. Your Instructions

Unless directed otherwise by you, we will act in accordance with the instructions of any of your employees involved in the assignment.

11. Amendments

We recognise that commercial considerations may require the amendment of your plans. You may require us to change, reject, cancel or stop any or all plans, schedules or materials in progress and we shall take all reasonable steps to comply, provided that we can do so within our contractual obligations to third parties (including media and suppliers). In the event of any cancellation or amendment it will be necessary for you to reimburse us for any expenses to which we are committed and also pay our charges for materials already done. Where we have committed contractors or our employees to work on your business, unless we have agreed otherwise we reserve the right to charge the equivalent of our minimum commitment to them upon your cancellation or amendment.

12. Additional Services

- 12.1 Any fixed charges that we agree with you are for the Services that we agree at that time.

If we are asked to carry out additional services or your brief to us changes or the term for the project changes we reserve the right to make an additional charge. We will try to notify you in advance that these additional services will mean additional charges but this may not always prove possible where commercial circumstances require us to carry out such additional services quickly.

- 12.2 We will seek your written approval wherever time permits. However signed faxes, e-mails and in exceptional circumstances oral approval will be acceptable. In the case of oral approval we will try to ensure that written confirmation will be sent to you.

13. Our Employees and Sub-contractors

You agree that, except with our prior written permission, both during this Agreement and for six months after its end you will not solicit, employ or otherwise deal with any of our employees and sub-contractors with whom you have had contact during this Agreement.

14. Testimonial

We will not issue any press release about our materials for you without your prior approval. Unless otherwise agreed, we may, however, mention publicly (including on our website) that we are, or have been, involved in providing Services to you.

15. Intellectual Property Rights

- 15.1 You retain the rights in any database that you provide to us and we will not use it for any purpose other than for your benefit.
- 15.2 Unless our materials relates to the creation of a website or the production of a video, we retain the intellectual property rights in any deliverable that we provide to you where they do not belong to a third party (e.g. stock photos or rights to music). Provided that all our charges for such deliverable are paid by you, we grant you a perpetual, non-transferable licence to use all such intellectual property rights for the purposes of your business.
- 15.3 Where our materials relates to the creation of a website or the production of a video, provided that all our charges for such materials are paid by you, we will assign to you all our intellectual property rights in such materials (other than all CGI scripts and shopping cart scripts used by us in the construction of the website, all extracts of codes from publicly available sources and WebControl content management systems and all associated script). Such assignment also does not cover intellectual property rights that belong to third parties and not to us (eg stock photos or rights to music). In that case we will procure that you have the right to use such third party rights in connection with our materials for the purposes of your business.
- 15.4 Where we obtain licences of intellectual property rights for you from third parties these shall only be for materials under this Agreement and shall not be used by you for any other purpose.

15.5 You agree to indemnify us against any claim that may be made against us by a third party in connection with materials prepared for you by us which was based on information or material provided by you to us.

16. Termination

16.1 Unless otherwise specifically agreed between us, either party can terminate this Agreement (after any applicable minimum period) at any time by giving one month's written notice to the other.

16.2 Either we or you shall be entitled to terminate this Agreement immediately by written notice to the other if the other commits any material breach of this Agreement and, in the case of a breach capable of remedy, fails to remedy it within 21 days after receipt of a written notice giving full details of the breach and requiring it to be remedied.

16.3 Either of us can also terminate this Agreement if the other is the subject of a bankruptcy order (or the equivalent in any other jurisdiction) or the other becomes insolvent or make any arrangement or composition with, or an assignment for the benefit of, its creditors or if any of its assets are the subject of any form of seizure. If either of us is a company, the other can terminate this contract forthwith if the first party goes into liquidation, either voluntary or compulsory, or if a receiver or administrative receiver or administrator is appointed.

16.4 In addition to our termination rights set out earlier, we may, at any time and at our sole option, either suspend your access to the Services under this Agreement until you give suitable undertakings or terminate this Agreement immediately if:

16.4.1 you breach any term of this Agreement; or

16.4.2 any charge remains unpaid by you for more than 30 days after the receipt of its invoice by you.

17. Liability

17.1 We warrant to you that we will seek to supply the Services with reasonable skill and care. We accept liability for our own negligence, but only to the extent stated in this clause.

17.2 Nothing in this Agreement shall be construed as restricting or excluding our liability for death or personal injury resulting from our negligence or for fraud or, to the extent that such rights may not be contracted out of, as affecting the statutory rights of any person dealing as a consumer.

17.3 Our total liability to you under this Agreement shall not exceed the amount paid by you for the particular Services.

17.4 Subject to the immediately preceding sub-clause, we shall be liable to you in respect of all direct loss or damage caused by our acts or omissions and those of our employees, agents or sub-contractors, other than Excluded Loss. In this clause the expression "Excluded Loss" means all special loss (whether or not the possibility of such loss

arising on a particular breach of contract or duty has been brought to our attention at the time of making this contract) and loss, corruption or destruction of data or loss of profits, business or anticipated savings, whether incurred directly or indirectly, or any indirect or consequential damage whatever, either in contract, tort (including negligence) or otherwise.

- 17.5 For the avoidance of doubt, in no event shall either party be liable to the other for any indirect or consequential loss of any nature and howsoever caused.
- 17.6 We do not have any implied obligation, duty or liability in contract other than those explicitly stated in this Agreement.

18. Force Majeure

We are not liable for any breach of this Agreement caused by matters beyond our reasonable control, including, but not limited to, Acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving our employees), failures or interruptions of electricity supplies, weather of exceptional severity or acts of local or central Government or other authorities.

19. General

- 19.1 You are not entitled to transfer or assign this Agreement without our prior written consent. We may sub-contract part of this Agreement but we shall still be fully liable to you for its proper performance.
- 19.2 Any notice required or permitted to be given by either party to the other under this Agreement shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 19.3 This contract excludes and/or supersedes any previous statements or agreements between us whether written or oral relating to the provision of the Services.
- 19.4 No waiver or any amendment to these terms shall be effective unless in writing and signed by both you and us.
- 19.5 A person who is not a party to these terms may not enforce any of them under the Contracts (Rights of Third Parties) Act 1999.
- 19.6 If any dispute arises out of these terms we will both attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. (See www.cedr.co.uk). Unless otherwise agreed, the mediator shall be appointed by CEDR. If the parties have not settled the dispute by the mediation within 42 days of the start of the first meeting held under such procedure, the dispute may be referred to litigation by either party.
- 19.7 This Agreement shall be governed by the laws of England and we both agree to submit to the exclusive jurisdiction of the English Courts.