

## TERMS AND CONDITIONS

These terms and conditions are to be read in conjunction with any special terms and conditions specified overleaf.

### 1. DEFINITIONS:

- 1.1. The Consultancy shall mean Black Eye Design Ltd (trading as black i) whose registered office is Henrietta House, 47 London Road, Tunbridge Wells, Kent TN1 1DT. Company registration No.3598192.
- 1.2. The Client is defined overleaf.
- 1.3. Contract shall mean this contract between the "Consultancy" and the "Client" for the supply of "Work" and "Services."
- 1.4. The Work and Services means the work and services to be provided by the Consultancy to the Client pursuant to this Contract, as set out overleaf. This shall include, without limitation, advertising, direct marketing, design, marketing communications or any other ancillary work or service provided by the Consultancy to the Client from time to time.

### 2. ACCEPTANCE AND TERMS

- 2.1. By requesting any Work and Services from the Consultancy and/or accepting any fee proposal, designs, plans and/or materials produced by the Consultancy in the Consultancy's performance of the Work and Services, the Client will be deemed to have accepted the terms and conditions of this Contract, which will govern the provision of the Consultancy's services to the exclusion of any other terms and conditions.

### 3. APPOINTMENT

- 3.1. The Client hereby appoints the Consultancy to provide the Work and Services on the terms and conditions set out in this Contract.

### 4. MEDIA BUYING AND OTHER SUPPLIERS

- 4.1. Where media advertising by the Client shall be placed by the Consultancy, a commission of 17.65% (the Commission) shall be charged by the Consultancy on the net amount payable by the Consultancy to the media for the Client's advertisements. The Consultancy shall invoice the Client for the full cost of the advertising (including, without limitation, the Commission) immediately upon placing the Client's advertisement and the same shall be payable forthwith. The commission fee is for the handling and managing of the media buying on behalf of the Client. The Consultancy will not be held responsible for any failure of third parties according to the Rights of Third Parties Act 1998.
- 4.2. All other production sub-contracts placed by the Consultancy will incur a handling fee on the net amount payable by the Consultancy to cover general management and administration.
- 4.3. The Client hereby agrees to make no direct contact with any sub-contractor utilised by the Consultancy relating to this Contract without prior consent from the Consultancy.

### 5. CLIENT INFORMATION

- 5.1. The Client undertakes promptly to provide the Consultancy with all information, assistance and materials to facilitate the proper and timely performance of the Work and Services including any client specific business requirements or laws within which any activity will need to comply.
- 5.2. The Client warrants that all information it supplies to the Consultancy hereunder shall be accurate and complete. It will not be illegal, misleading or defamatory and will not infringe the intellectual property rights of any third party. The Client shall not in any way require the Consultancy to do any act or thing which may contravene the British Code of Advertising Practice, The Independent Television Commission Code of Advertising Standards and Practice for Television, the ITC Sponsorship Code, the Radio Authority Code and any other relevant codes of Practice or any relevant legislation or common law.

### 6. APPROVALS

- 6.1. The Consultancy shall submit to the Client for approval all copy, layout, artwork, storyboards and/or scripts together with media schedules for time, space and other facilities. Where reasonably required by the Client in writing, the Consultancy will submit estimates of the cost of the various items or work required. The approval of copy and layout will be authority for the Consultancy to purchase production materials and to prepare proofs and the approval of proofs will be the authority for the Consultancy to publish the same. The approval of television, cinema and radio scripts and/or storyboards will be authority of the Consultancy to make production contracts and engage performers and the approval of films and recordings will be authority to transmit the same. Where schedules and estimates are approved this will constitute authority for the Consultancy to reserve and make contracts for space, time and other facilities under the terms and conditions required by the media or suppliers. The client shall be responsible for all costs and expenses thereby incurred. For the avoidance of doubt, the Consultancy shall be entitled to assume that any person holding himself out to have the necessary authority to provide any approvals required from time to time pursuant to this clause 6 has such authority. Whilst approval will usually be sought in writing the Consultancy can act on verbal approval without question.

### 7. CONTACT REPORTS

- 7.1. Where, following a meeting between representatives of the Consultancy and representatives of the Client, the Consultancy submits a report of the meeting to the Client recording decisions, agreements, amendments or other matters discussed. That report shall be deemed to be a true and accurate record of the meeting and of the decisions taken or agreements reached, unless within 48 hours of the date of the report the Client notifies the Consultancy in writing that it does not accept any part, or parts, of the report as being a true record of the meeting.

### 8. FEES AND EXPENSES

- 8.1. The Consultancy will invoice the Client for all approved costs and expenses (including without limitation couriers and international telephone calls and design fees) and the charges of third party suppliers (including without limitation photographers, illustrators and printers). The Consultancy reserves the right to require the Client to put the Consultancy in funds for third party expenses before they are incurred and in relation to new Client business have the right to require funds to be provided on account.
- 8.2. Unless otherwise stated in these conditions all Fees and Expenses owing by the Client to the Consultancy under this Contract shall be payable within 28 days of the date of the invoice and in the event that the Client does not pay an invoice on the due date the Consultancy shall be entitled to charge interest at the rate of 2% above the base rate of Co-operative Bank Plc from time due to time of payment. Any invoice queries should be notified to the Consultancy in writing within 7 days of the date of the invoice.
- 8.3. All sums referred to in this Contract shall be payable in full without deduction, withholding, or set off.
- 8.4. Where a third party supplier has requested payment in advance of any expense, the Client will pay the Consultancy's invoice for such expense within seven days of presentation.
- 8.5. Where a surcharge is levied by a supplier against the Consultancy due to late payment, and this results from late payment by the Client, the Client shall immediately reimburse to the Consultancy the amount of such surcharge, together with any accrued interest charged by the supplier in respect of the overdue amount.

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8.6. If the Client cancels or amends any Work and Services after the Consultancy has started work on them, the Client will reimburse the Consultancy for all costs, expenses, charges and losses incurred by the Consultancy as a result of such cancellation or amendment including without limitation any costs, expenses or charges arising from the cancellation or amendment of any contracts the Consultancy has entered into and/or orders the Consultancy has placed with third parties for the purpose of performing the Work and Services for the Client.

## 9. TIME OF THE ESSENCE

9.1. Time shall not be of the essence in the performance of the Consultancy's obligations in respect of this Order. The Consultancy however will use its reasonable endeavours to meet any deadlines specified. The Consultancy will not be held responsible for any failure to meet any agreed timetable unless it is attributable to "force majeure." The Client should provide the Consultancy with all information and sign off work promptly and efficiently when requested to do so in order for the Consultancy to keep to the agreed timetable.

## 10. INTELLECTUAL PROPERTY RIGHTS

- 10.1. The Client acknowledges and agrees that unless otherwise agreed between the parties, all property, copyright and other intellectual property rights in any finished material created by the Consultancy (including all concepts, artwork, typography and subcontracted work such as Photography, Illustrations) and accepted by the Client pursuant to this Contract (the Materials) will immediately upon creation vest in and will be and remain the Consultancy's sole and exclusive property.
- 10.2. For the avoidance of doubt, the Consultancy retains the copyright and all other intellectual property rights in any material contained in any presentation or in any pitch work. In the event that the Consultancy's presentation or pitch does not proceed beyond concept stage during this contract.
- 10.3. Should any Intellectual Property rights be passed to the Client in writing for any finished material these refer only to the final selected work and not any concepts or work developed in attainment of the final work and where the Consultancy has expressly agreed to do so.
- 10.4. While all work conducted by the Consultancy will be original work and will not knowingly infringe third party rights it is the Client's responsibility to ensure no such rights are infringed.

## 11. CONFIDENTIAL INFORMATION

- 11.1. Neither party will disclose without the permission of the other any confidential information with which they may be supplied in the course of this Contract (Confidential Information). For the purpose of this clause, Confidential Information excludes confidential information which:
- 11.1.1 is in or falls into the public domain through no default of the recipient;
  - 11.1.2 must be disclosed by law;
  - 11.1.3 was already known to the recipient before receipt hereunder.
- 11.2. Notwithstanding the foregoing the Consultancy may use any general marketing and advertising intelligence in the field of the Client's products or services which the Consultancy acquires pursuant to its appointment hereunder.

## 12. PUBLICITY RIGHTS

12.1. The Client shall permit the Consultancy to utilise any Works generated in pursuit and in completion of this Contract for the purposes of the Consultancy's self-promotion in any form (website, direct marketing, advertising etc) including any variation of it.

## 13. LIMITATION OF LIABILITY

- 13.1. The Consultancy shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit), consequential loss (i.e loss of opportunity, reputation) suffered by the Client arising out of a breach by the Consultancy of this Contract.
- 13.2. Under no circumstances shall the liability of the Consultancy under this Contract exceed the contract price payable in respect of the Work and Services giving rise to the liability.
- 13.3. The Consultancy will not be liable for any delays, errors or omissions in publications or transmissions, to the extent that such delay, omission or error is outside the Consultancy's control.

## 14. TERMINATION / SUSPENSION

- 14.1. The Consultancy may terminate / suspend this Agreement immediately on written notice to the Client if:
- 14.1.1 the Client ceases to pay its debt in the ordinary course of business or cannot pay its debts as they fall due or (being a company) is deemed to be unable to pay its debts or has a receiver or administrative receiver appointed or has a winding-up petition presented against it or (being a natural person) has a bankruptcy petition against him; or terminate the Client's contract (after consultation) should continuing work for the Client be deemed damaging to the Consultancy's professional reputation.
  - 14.1.2 the Client commits a material or persistent breach of any of the terms of this Contract and in the case of a breach capable of remedy fails to remedy such breach within 30 days of receipt of written notice giving full particular of the breach and requiring the same to be remedied.

## 15. FORCE MAJEURE

- 15.1. The Consultancy shall be under no liability if it is prevented from or unable to perform any obligations owed by it to the Client for any reason beyond its control including (without prejudice to the generality of the foregoing) Act of God, legislation, executive action, war, fire, flood, drought, breakdown or other failure of all or part of its machinery, failure of power supply, lock-out, strike or other action taken by employees in contemplation of furtherance of any dispute or owing to any inability to procure materials or labour required for the performance of such obligations.

## 16. NOTICES

- 16.1. All notices and other communications required or permitted to be served or given hereunder shall be in writing and delivered by hand or sent by first class registered post or courier to the intended recipient's address as specified in this Contract or such other address as either party may notify to the other from time to time.

## 17. GENERAL

- 17.1. The Consultancy acts in all of its contracts as a principal and not as an agent of the Client.
- 17.2. This Contract cannot be varied unless it is in writing and signed by or on behalf of both parties.
- 17.3. This Contract shall be deemed to have been made in England and shall be governed and interpreted in all respects in accordance with the Laws of England and subject to the jurisdiction of the English and Welsh courts.