

## **terms and conditions of supply**

### **definitions**

In these terms and conditions, the following expressions have the following meanings:

- |     |                                   |  |
|-----|-----------------------------------|--|
| 1.1 | "Company"                         | Talisman Marketing Solutions Limited   |
| 1.2 | "Contract"                        | any contract entered into for the supply of Goods or Services as specified in a Work Document by the Company to the Customer   |
| 1.3 | "Customer"                        | the customer of the Company whose name appears on a Work Document  |
| 1.4 | "Deliver, delivery or deliveries" | (as agreed in advance by the parties shall mean all forms of delivery including but not limited to delivery by transport, hand or via ISDN or email  |
| 1.5 | "Goods or Services"               | any goods or services forming the subject matter of any Work Document  |
| 1.6 | "Materials"                       | means all artwork, digital artwork, digital images, type, moulds, stereotypes, electrotypes, film-setting, negatives and positives and all lithographic, photographic or other similar work                                    |
| 1.7 | "Resulting IPR"                   | means any intellectual property rights of any description including but not limited to copyright, design rights (registered or unregistered) or trade marks arising from and developed pursuant to a Contract                  |
| 1.8 | "Work Document"                   | means a statement of work, quotation or other similar document describing the goods and services to be provided by the Company or any contract entered into for the supply of Goods or Services by the Company to the Customer |

## **quotations, contracts and variations**

- 2.1 Before the Commencement of the services the Company shall submit to the Customer a Work Document which shall specify the Goods or Services to be supplied and the price payable. The Customer shall notify the Company immediately if the Customer does not agree with the contents of the Work Document. All Work Documents shall be subject to these terms and conditions.
- 2.2 These conditions apply to all contracts for the supply of Goods or Services by the Company to the Customer to the exclusion of:
- 2.2:1 all other terms or conditions including any terms and conditions which the Customer may purport to apply; and
- 2.2:2 any purchase order, confirmation of order or similar document referred to by the Customer.
- 2.3 Acceptance of any delivery or performance, by or on behalf of the Customer, will constitute acceptance of these terms and conditions.
- 2.4 Save for clause 3.2 below, unless the Company has first agreed in writing, the Company is not bound by any variation to these terms and conditions.

## **prices**

- 3.1 The price for the supply of Goods or Services are as set out in the Works Document.
- 3.2 The Company's prices may be varied at any time, at the Company's discretion, for any increases in costs incurred by the Company after the date on which they were quoted, from fluctuations (including currency variations) in the cost of materials, equipment, labour, transport or utilities arising from whatever cause, any alterations in specifications or quantities or production, delivery or performance schedules or any

suspension of work requested by the Customer, or any delay in the supply by or on behalf of the Customer of any instructions, data or materials (including "free issue" items) or any inaccuracy, insufficiency or defect in them.

## **payment**

- 4.1 All payments are subject to VAT at the prevailing rate.
- 4.2 The Customer must pay the Company within 30 days of the date of the Company's invoice.
- 4.3 The Company will charge the Customer for all work, including that of an experimental nature, that is required by the Customer unless otherwise stated at the briefing stage.
- 4.4 The Company reserves the right to charge interest on any outstanding balance due from the Customer to the Company at the rate of 2% per calendar month from the date when payment becomes due until the Customer pays the Company in full.
- 4.5 The Company reserves the right to apply amounts received first in settlement of interest on overdue debts and then of debts due beginning with the oldest.
- 4.6 If the Customer suspends or delays the completion, or delivery or performance of the Goods or Services for whatever reason for a period of 30 days the Company can then invoice the Customer for:
  - 4.6:1 all work carried out to that date;
  - 4.6:2 all materials purchased or ordered;
  - 4.6:3 all other additional costs associated with the Customer's order.

## **specification of the Goods**

5. All Goods or Services shall be required only to conform to the specification in the Works Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Company and no representation written or oral, correspondence or statement shall form part of the Contract.

## **proofs**

- 6.1 The Company may make an additional charge if the Customer requires modification to Goods or Services or proofs provided or where copies supplied are not clear or legible.
- 6.2 Where the style, type or layout of the Goods or Services is left to the Company's judgement, the Company may charge for additional work incurred as a result of any changes by the Customer.

## **delivery, risk and performance**

- 7.1 Unless otherwise agreed in writing by the Company Goods shall be delivered and risk in them shall pass to the Customer when they are made available to the Customer at the Company's works or other delivery point agreed in writing by the Company.
- 7.2 Where Goods are made available at a point other than the Company's premises, the Customer shall be responsible for all off-loading and the Company reserves the right to deliver the Goods at the nearest point of suitable access. The Customer must make all arrangements necessary to take delivery of the Goods when the Company tenders them to the Customer.

- 7.3 The Company may charge the Customer an additional amount for any variation in delivery arrangements made by the Customer. Such variation includes alternative addresses for delivery or expedited delivery.
- 7.4:1 Times quoted for delivery or performance are subject to the supply of all instructions or other matter required from the Customer. The Company will endeavour to comply with any date proposed or confirmed by it but shall not be liable for any loss, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever.
- 7.5 If the Customer fails to take delivery of any Goods or Materials on which the Company has performed work when tendered or to provide adequate delivery instructions or to collect them when notified they are ready for collection the Company at its discretion may exercise any or all of the following rights, namely, to store the Goods or Materials at the risk of the Customer, to require the Customer to pay all storage, transportation, handling or other charges (including expenses in connection with the delay or detention of vehicles) incurred by the Company as a result of such failure or to require the Customer to pay for the Goods (including any work) as though delivery or performance had been completed.
- 7.6 The Company may deliver the Goods by instalments each of which shall be deemed to be the subject of a separate contract and, unless otherwise agreed in writing, no failure by the Company in any one or more instalments shall entitle the Customer to repudiate any contract for Goods previously delivered or to refuse to accept any undelivered Goods.

## **goods in transit and claims**

- 8.1 To the extent allowed by law and subject to below, the Company will not be liable for any damages or loss of the Goods that occur in transit to the Customer.
- 8.2 If the Customer wishes to make a claim as a result of loss, delay or damage to Goods the Customer must do the following:
- 8.2:1 for Goods delivered by the Company notify the Company within three days of delivery and make any claim within seven clear days of delivery;
- 8.2:2 for Goods not delivered by the Company notify the Company within 28 days of collection and make any claim within 42 days of collection.
- 8.3 All other claims must be made in writing within 28 days of delivery.

## **title**

- 9.1 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and not pass to the Customer (who shall, nevertheless, subject to the conditions stated below, be entitled to resell them as principal only, and to use them in the ordinary course of business) until the Company has received in cash or cleared funds payment in full of the price of the Goods and of all other debts for any other Goods or Services owed to it by the Customer on any account.
- 9.2 Until title passes:
- 9.2:1 the Customer shall hold the Goods as bailee for the Company and ensure that they are at all times clearly identified as the property of the Company;
- 9.2:2 the Customer may sell or use the Goods in the ordinary course of the business at full market value for the Company's account;

- 9.2:3 any sale or use will be on the Customer's behalf and the Customer will deal as principal in that sale or use;
- 9.2:4 the Customer must hold the entire proceeds of sale or otherwise of the Goods in trust for the Company and must not mix those proceeds with other money or pay them into any overdrawn bank account;
- 9.2:5 the Company shall be entitled at any time on demand to:
  - 9.2:5:1 repossess, remove from other equipment (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Customer) the Customer's right to use or sell them; and
  - 9.2:5:2 enter any premises where the Goods are located for the purpose of inspecting or repossessing them.
- 9.3 The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Customer.
- 9.4 The Company transfers to the Customer only such title and rights of use as the Company has in any Goods and in the case of material provided by any third party shall transfer only such title and rights as that party had and has transferred to the Company.

### **lost or damaged goods etc**

- 10.1 If at the time of delivery any Goods or Services are missing, lost or damaged or otherwise not in accordance with the Work Document the Company will at its expense make good the discrepancy within a reasonable period by the replacement of the Goods concerned at the original point of delivery or, in its discretion, their repair (or, in the case of any Services not conforming to the Work Document, their re-performance) or, at its option, allow credit for their invoice value, subject to these conditions and all other requirements of the Company current from time to time.

- 10.2 The Company shall have no liability in respect of any such discrepancy unless the Customer has given the Company notice thereof quoting the Work Document number:
- 10.2:1 (in case of any Goods which are missing, damaged or otherwise not in accordance with the Work Document) within three (3) working days of receipt of the consignment or (in case of any loss or damage could have occurred in transit and where the Company has agreed in writing to assume responsibility for carriage) within such period and in such manner as will enable the Company to comply with time limits or other requirements imposed by any carrier of which written notice has been given by the Company to the Customer; or
- 10.2:2 (in case of loss of a whole consignment) within seven (7) days from the date of invoice;
- 10.2:3 (in the case of any loss, shortage, damage or non-conformity with the Work Document which could not reasonably be detected upon inspection) immediately upon the discrepancy becoming apparent and in any event not later than three (3) months after receipt of the Goods.

### **customer's obligations**

- 11.1 To enable the Company to perform its obligations under this Agreement the Customer shall:
- 11.1:1 co-operate with the Company;
- 11.1:2 provide the Company with any information reasonably required by the Company;
- 11.1:3 obtain all necessary permissions and consents which may be required before the commencement of the services; and
- 11.1:4 comply with such other requirements as may be set out in the Work Document or otherwise agreed between the parties.



- 11.2 The Customer shall be liable to compensate the Company for any expenses incurred by the Company as a result of the Customer's failure to comply with Clause 11.1.
- 11.3 Without prejudice to any other rights to which the Company may be entitled, in the event that the Customer unlawfully terminates or cancels the Goods or Services agreed to in the Work Document, the Customer shall be required to pay to the Company as agreed damages and not as a penalty the full amount of any third party costs to which the Company has committed and in respect of cancellations on less than five working days' written notice the full amount of the Goods or Services contracted for as set out in the Work Document, and the Customer agrees this is a genuine pre-estimate of the Company's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 11.1 shall be deemed to be a cancellation of the Goods or Services and subject to the payment of the damages set out in this Clause.
- 11.4 In the event that the Customer or any third party shall omit or commit anything which prevents or delays the Company from undertaking or complying with any of its obligations under this Agreement, then the Company shall notify the Customer as soon as possible and:
- 11.4:1 the Company shall have no liability in respect of any delay to the completion of any project;
- 11.4:2 if applicable, the timetable for the project will be modified accordingly;
- 11.4:3 the Company shall notify the Customer at the same time if it intends to make any claim for additional costs.

### **alterations to the specification document**

- 12.1 The parties may at any time mutually agree upon and execute new Work Documents. Any alterations in the scope of Goods or Services to be provided shall be set out in the Work Document, which shall reflect

the changed Goods or Services and price and any other terms agreed between the parties.

12.2 The Customer may at any time request alterations to the Work Document by notice in writing to the Company. On receipt of the request for alterations the Company shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.

12.3 Where the Company gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Company by notice in writing whether or not it wishes the alterations to proceed.

12.4 Where the Company gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Work Document shall be amended to reflect such alterations and thereafter the Company shall perform the Contract upon the basis of such amended terms.

### **warranty**

13.1 Subject to clauses 13.2 and 13.3 below, at the time of delivery the Company will try to ensure that the Goods or Services correspond with the order made by the Customer.

- 13.2 All estimates are conditional upon the following margins being permitted for any addition or shortage:
- 13.2:1 5% for work in one colour only; and
  - 13.2:2 10% for other work.
- 13.3 All estimates exceeding quantities of 50,000 are subject to the above save that the margins shall be 4% and 8% respectively.
- 13.4 Except where the Customer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) and unless prevented from doing so by statute or regulation the Company excludes all other warranties, conditions or terms relating to:
- 13.4:1 fitness for purpose,
  - 13.4:2 the satisfactory nature of the Goods or Services; or
  - 13.4:3 their condition, whether implied by statute or common law or otherwise.
- 13.5 The Company's liability under clause 13 extends only to replacing the Goods or Services or, if the Customer has already paid for them, refunding their cost.

### **exclusion of liability**

- 14.1 The Company is not liable for any loss that the Customer suffers in respect of Goods supplied by the Company if the Customer uses them in conjunction with Materials that are not compatible with them. The Company will discuss such matters with the Customer on request.
- 14.2 The Company is not liable for any errors in the Goods or Services not corrected by the Customer at any proof stage.

- 14.3 The Company is not liable for any loss that the Customer suffers (except for death or personal injury arising out of the Company's negligence) arising from the use of machinery and equipment or Goods supplied by the Company.
- 14.4 The Company shall have no liability for any indirect or consequential loss or damage suffered by the Customer under or in connection with the Goods or Services supplied, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against the Customer by any person and the Customer shall be solely responsible for any such claim.
- 14.5 The Company shall be discharged of all liability to which these conditions apply unless proceedings are begun within twelve (12) months after the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 14.6 Any claim by the Customer or acceptance of liability by the Company in respect of any particular Goods or Services shall not entitle the Customer to reject or refuse to pay for any other Goods or Services comprised in the same or any other contract with the Company.

### **materials supplied by you**

- 15.1 Notwithstanding clause 13.4:1 above, the Company can reject any Materials supplied or specified by the Customer if the Company believes that they are unsuitable.
- 15.2 If Materials are found to be unsuitable during production the Company may make an additional charge for any resulting additional work save that no charge will be made if any additional cost is incurred as a result of unreasonable delay by the Company on identifying the unsuitable Materials.

- 15.3 Unless otherwise previously agreed in writing between the parties all Material supplied by the Customer will at all times remain the Customer's property and at the Customer's risk.
- 15.4 The Company reserves the right to efface or destroy any Material (where applicable) after completion of the work unless agreed otherwise in writing with the Customer.

### **termination or suspension**

- 16.1 Either party may terminate at any time a contract for the printing of periodical publications on giving the other the following period of written notice:
- 16.1.1 for periodicals produced monthly or more frequently 13 weeks;
  - 16.1.2 for all other periodicals 26 weeks.
- 16.2 If completion of the Goods or Services is suspended or delayed due to but not limited to industrial disputes, shortage of supplies, inclement weather or other causes beyond the Company's control the Customer can terminate immediately any contract with the Company subject to payment for all work done and materials used up to that date. If the Customer does not terminate under this clause and work resumes, the Customer must accept delivery of Goods or Services in accordance with these conditions when they become available
- 16.3 If the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations is unable to pay its debts in the ordinary course of its business, has a receiver, manager, administrator, administrative receiver or trustee in bankruptcy (as the case may be) appointed for all or any part of its undertaking, assets or income, has a resolution passed or a petition presented to any court for its winding up (compulsorily or voluntarily), enters into any composition

or arrangement with its creditors (whether formal or informal), has any distraint or execution levied on any of its assets, suffers any action similar to any of the foregoing in any jurisdiction or ceases to trade or the Company bona fide believes that any of the foregoing matters may occur, then, in any such event, the Company shall, without prejudice to any other remedy, be entitled, at its discretion, without liability to the Customer, by giving the Customer written notice at any time or times, to suspend its performance of or (whether or not such performance has previously been suspended) terminate the Contract.

- 16.4 The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of the same or any subsequent or other breach.

### **intellectual property**

- 17.1 The Company shall own the Resulting IPR.
- 17.2 In the event that the Customer terminates the Contract and upon request to do so by the Customer the Company will assign the Resulting IPR owned by the Company to the Customer.

The Company will provide details to the Customer of any third party intellectual property rights that the Company has used within the Resulting IPR for which it will be the Customer's responsibility to seek permission to use from that third party provided that such assignment and provision of information shall only be available upon the Customer paying all monies outstanding from the Customer to the Company.

### **force majeure**

18. The Company shall not be liable for any delay or other failure to perform the whole or any part of the Contract resulting from any cause whatsoever beyond the Company's control existing at the date of the Contract or arising thereafter [including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, supply of labour, materials, power or supplies, strike, lockout or labour dispute (whether or not at the Company's works), illness, epidemic, flood, drought, war, civil commotion, or restriction of any authority or governmental agency].

### **general**

- 18.1 Work on any materials (including "free-issue" items) supplied by the Customer is carried out by the Company on the express understanding that the Company accepts no responsibility for any distortion, faults, errors or defects which arise during or as a result of the work from any cause whatsoever including any mistake or negligence on the part of the Company except that subject to the availability of capacity and facilities the Company will endeavour to correct or re-perform any such work at the Customer's expense and risk.
- 18.2 The acceptance of any cancellation for the Contract requested by the Customer shall be at the Company's discretion and take effect only when written confirmation of such acceptance has been given by the Company.
- 18.3 Any specifications, drawings and other technical information contained in the Company's quotations, catalogues, price lists, advertisements or elsewhere are approximate only and intended merely to present a general idea of the Goods or Services and (unless otherwise agreed in writing by the Company) are not to form part of the Contract.

- 18.4 The Company shall have no liability for any advice, opinion or information furnished by the Company, its servants or agents unless given in writing by a person authorised in writing by a director of the Company or the Company Secretary to give the same, in response to a written request by the Customer referring to the Contract.

### **content**

- 19.1 The Company can refuse to supply any Goods or Services that in our opinion is illegal or of a libellous nature or infringes the rights of any third party.
- 19.2 The Customer will indemnify the Company in respect of all claims, costs and expenses of whatever nature arising out of any libellous matter or any infringement of copyright, patent, design or any other third party rights contained in any Goods or Services provided for the Customer.

### **law, jurisdiction and construction**

- 20.1 The Contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to the Contract except to the extent the Company invokes the jurisdiction of the courts of any other country.
- 20.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.

### **notices**

21. Any notice to be given under the Contract shall be in writing and if sent by email or forwarded by first class prepaid letter post to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given on the date of the email (if receipt is confirmed in writing) or 2 working days (or 7 working days in the case



of Customers outside the United Kingdom) following the date of posting.

Registered Office: The Barley Mow Centre, 10 Barley Mow Passage,  
Chiswick W4 4PH

Registered in England no. 04216851

Issued on: September 2014