



## 1. GENERAL

1.1. Your relationship with Us will be subject to these terms and conditions. Some of the words in the terms and conditions have specific meanings:- 1.1.1. "Client" "You" or "Your" means the person, firm or company shown in the Purchase Order with whom the Contract is made; 1.1.2. "Contract" means the agreement made between Newton Creative and the Client as detailed in the Purchase Order and these terms and conditions; 1.1.3. "Newton Creative" or "Us" means Newton Creative Limited (company number 07620821) trading as Newton Creative whose registered office is at Newton House, 54 Stansfield Street, Manchester M40 1NF and their employees, agents and assigns; 1.1.4. "Deliverables" means the goods and works of authorship designed developed written prepared or provided to the Client in relation to the Services provided by Newton Creative; 1.1.5. "Fee" means the amount payable to Newton Creative by the Client in respect of the Services; 1.1.6. ["Intellectual Property Rights" means all patents, rights to inventions utility models copyright and related rights trade marks trade business and domain names rights in trade dress or get-up rights in goodwill or to sue for passing off unfair competition rights rights in designs rights in computer software database rights topography rights in confidential information (including know-how and trade secrets) and any other intellectual property rights in each case whether registered or unregistered and including all applications for an renewals of or extensions of such rights and all similar or equivalent rights or forms of protection in any part of the world]; 1.1.7. "Purchase Order" means the Client's purchase order as approved in writing by Newton Creative; 1.1.8. "Services" means the creative, design and advertising services to be provided by Newton Creative to the Client in accordance with the Contract; 1.2. The Client acknowledges that it enters into the Contract in the course of its business and not as a consumer. 1.3. These Conditions shall apply to the Contract except where otherwise agreed by Newton Creative in writing. 1.4. Any terms of business offered by or on behalf of the Client shall be deemed to be expressly rejected by Newton Creative.

## 2. FEE, QUOTATIONS AND PRICES

2.1. The Fee shall be as stated in the Purchase Order. 2.2. The amount stated in any quotation given by Newton Creative shall remain valid for a period of thirty (30) days from the date of the quotation and if Newton Creative does not receive a Client purchase order for the Services within this period the quotation shall be deemed to be automatically withdrawn. 2.3. Where the Client:- 2.3.1. requests changes to the Services; 2.3.2. requests alterations to the Deliverables ; 2.3.3. requests additional proofs; 2.3.4. fails to provide the materials required to provide the Services; 2.3.5. fails to provide adequate instructions or information required to provide the Services; 2.3.6. does not permit sufficient time for the Services to be completed during normal working hours i.e. 9am – 5.30pm Monday – Friday; then Newton Creative shall be entitled to increase the Fee to reflect the additional work required by giving notice to the Client at any time before delivery of the Deliverables. 2.4. Newton Creative reserves the right to sub-contract work and where any quotation given includes an estimate in respect of the costs of a sub-contractor such estimate whilst given in good faith is subject to amendment and will not be binding until confirmed by Newton Creative 2.5. Any Purchase Order may be amended or cancelled only by agreement in writing by Newton Creative [and any costs incurred by Newton Creative in connection with such amendment or cancellation may be charged to the Client. 2.6. The Client agrees that if requested by Newton Creative it shall pay for all work carried out at the Client's request including work carried out for an initial pitch. 2.7. The Fee is exclusive of Value Added Tax which will be charged to the Client at the rates in force at the date of the Contract.

## 3. DELIVERY

3.1. Time of delivery shall not be of the essence. 3.2. Any delivery date specified is a genuine forecast but shall be subject to extension to cover delays caused by events beyond Newton Creative's control. 3.3. Where at the request of the Client Newton Creative is asked to forward Deliverables by post courier rail carrier or any other means the Client agrees to pay an appropriate charge for this service. 3.4. Whilst every reasonable care will be taken in the despatch of the Deliverables, no claims will be accepted by Newton Creative in the event of damage to or non-delivery or late delivery of Deliverables by whichever means of transport have been used once the Deliverables have left the premises of Newton Creative. 3.5. Any additional work to replace lost or damaged Deliverables where such loss or damage is not due to Newton Creative's negligence will be charged to the Client.

## 4. TERMS OF PAYMENT

4.1. All invoices are due immediately and payable within 30 days of the invoice date. 4.2. Newton Creative reserves the right to charge and be paid interest on all sums due from the Client at the rate of 4% above HSBC plc base lending rate from the date upon which payment is due until the date upon which it is received as well as after judgement. 4.3. Invoices are payable in full and the Client shall not be entitled to withhold or set-off payment or make any counterclaim. 4.4. The time of payment shall be of the essence. 4.5. Dishonoured cheques will be charged at £35.00 per representation.

## 5. DEFECTS IN THE DELIVERABLES

5.1. The terms of this clause 5 will apply to all Deliverables supplied by Newton Creative whether the copy artwork digital or other media has been created by Newton Creative or a third party or the Client has supplied the same. 5.2. Subject to the terms of clause 5.3 below the Client shall approve and sign off all bromides films digital or other media immediately upon receipt. 5.3. The Client shall be entitled to request up to two (2) amendments to Deliverables supplied for approval. Amendments requested by the Client in addition to the two (2) permitted will be charged to the Client in accordance with the rates prevailing on Newton Creative's current rate card. 5.4. Newton Creative shall not be liable for any defects in the Deliverables beyond Newton Creative's reasonable control. 5.5. If the Client believes that the Deliverables do not conform to the Purchase Order whether as to content or quality or quantity it shall notify Newton Creative by post or email within five (5) working days of delivery. If no such notification is received then the Deliverables shall be deemed to be accepted by the Client and to conform to the Purchase Order in every respect. 5.6. Newton Creative's liability for defects in the Deliverables caused by the negligence of Newton Creative shall be limited to the replacement of the Deliverables at no additional cost to the Client provided that such defect is notified in accordance with clause 5.5 above and the Deliverables have been returned by the Client for inspection by Newton Creative. 5.7. In any event the total liability of Newton Creative for defects or errors in the Deliverables shall be limited to a sum equivalent to the invoice price of the Deliverables in respect of which any claim is made. 5.8. Where a complaint or a claim has been made in respect of Deliverables alleged to be defective Newton Creative may suspend further deliveries of any Deliverables under this Contract which may have the same or similar alleged defects until the validity of such complaint or claim has been finally determined and in such event the applicable delivery dates shall be postponed accordingly. 5.9. The Client acknowledges that colour separated films will not be guaranteed for registration.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1. During the Contract save as otherwise expressly provided by the terms of clause 6.3 below the:- 6.1.1. Intellectual Property Rights in the Deliverables shall belong to Newton Creative and shall be licensed to the Client as provided at clause 6.1.2 below; 6.1.2. Contract shall operate as a licence for the Client to use the Deliverables until the date payment is due and provided that Newton Creative receives payment of the Fee in full in accordance with the terms of clause 4 above this Contract shall operate as an automatic licence for the Client to continue to use the Deliverables and the Intellectual Property Rights subject to the terms of this Contract. 6.2. All licences granted to the Client by Newton Creative are conditional on the Deliverables and the Intellectual Property Rights in them being used only for the purposes agreed in the Contract and the Client hereby undertakes and agrees to promptly notify Newton Creative in order to obtain its approval (which shall not be unreasonably withheld or delayed) to use the Deliverables and/or any Intellectual Property Rights in them for any additional purpose including but not limited to re-use, re-print or duplication and the Client further agrees to pay Newton Creative the appropriate fee for such additional use as listed in Newton Creative's rate card current at that time. 6.3. Where expressly stated in the Purchase Order, the Client may acquire the Intellectual Property Rights in such of the Deliverables which are specifically created for the Client under the Contract; 6.4. In the event that an assignment of Intellectual Property Rights in the terms stated at clause 6.3 above is agreed then subject to full payment of the Fee on or before the due date: 6.4.1. the Client shall acquire ownership of the Intellectual Property Rights in the Deliverables which are specifically created by Newton Creative for the Client immediately upon full payment of the Fee; 6.4.2. for the avoidance of doubt, the Client shall not acquire ownership of any underlying material or software used by Newton Creative in the performance of the Services and in respect of which the Intellectual Property Rights are at the Contract date or at any time thereafter owned by Newton Creative or any third party; 6.5. In the event that the Client fails to pay the Contract fee in full on the due date in accordance with the provisions of clause 4 above then the licence to use the Deliverables shall immediately terminate and all rights shall revert back to and be the property of Newton Creative. 6.6. The provisions of clause 6.5 above shall be without prejudice to any claim which Newton Creative may have against the Client for non-payment of the Fee or any part of it.

## 7. TITLE AND RISK

7.1. Title to the Deliverables shall not pass to the Client until full payment of the Fee is received by Newton Creative in cleared funds. The Client shall have possession of the Deliverables as bailee (or custodian) for Newton Creative and shall store the Deliverables in such a way as shall enable them to be identified as the property of Newton Creative provided that if the Client is purchasing the Deliverables for resale the Client may act as agent of Newton Creative and sell or deliver the Deliverables to a third party in the ordinary course of the Client's business on condition that until full payment of the Fee, the Client shall hold all the proceeds in an interest bearing account and further the Client hereby assigns to Newton Creative all rights and claims which the Client may have against its customer arising from such sale until



payment is made in full. 7.2. Newton Creative reserves the right to repossess any Deliverables in respect of which payment is overdue and following such repossession to resell such Deliverables if possible and for this purpose the Client hereby grants an irrevocable right and licence to Newton Creative its servants and agents to enter upon the Client's premises and this right shall continue despite termination of the Contract for any reason and is without prejudice to any other rights of Newton Creative 7.3. All risk in connection with the Deliverables shall pass to the Client upon despatch from the premises of Newton Creative.

## 8. LIBELLOUS/ILLEGAL MATERIAL

8.1. Newton Creative shall not be required to process any material which in its opinion is or may be of an illegal or libellous nature or infringes the intellectual property or any other rights of any third party. 8.2. The Client agrees to indemnify Newton Creative in respect of all losses costs and expenses resulting from alleged or actual claims arising out of any libellous matter or any infringement of third party Intellectual Property Rights or personal rights contained in any materials provided by the Client and the indemnity shall extend to any amounts paid on lawyer's advice or in settlement of any claim. 8.3. Newton Creative shall be entitled at any time to discontinue work if in Newton Creative's opinion such work may be libellous illegal or an infringement of the Intellectual Property Rights of any third party and in such circumstances the Client shall be liable to pay Newton Creative for the Services carried out prior to the date of discontinuance immediately upon notice.

## 9. OWNERSHIP OF ARTWORK AND PRINT GOODS

9.1. All artwork films print goods digital or other media produced or originated during the course of Services shall remain the property of Newton Creative who reserves the right to dispose of the same immediately after completion of the Contract. 9.2. Despite the terms of clause 9.1 above at the request of the Client Newton Creative may be able to make arrangements for the storage of materials at the cost of the Client provided always that where such materials are stored for the Client pursuant to the terms of this clause 9.2 whilst every care will be taken to keep the materials in good condition, the Client acknowledges that Newton Creative accepts no liability for damage or loss to such materials of any kind. 9.3. Subject to third party rights at the request of the Client Newton Creative may negotiate with the Client for the sale of such materials at any time during the period mentioned in this clause. 9.4. All ideas designs and visuals whether provided pursuant to the Services during a pitch or tender process or otherwise are submitted by Newton Creative in confidence and unless otherwise agreed in writing Newton Creative owns the Intellectual Property Rights in and to them and the Client shall not have any right to use such ideas designs and visuals unless and until a contract which provides for such use is entered into between Newton Creative and the Client.

## 10. STORAGE OF CLIENT MATERIAL

10.1. Whilst every care and precaution is taken against loss or damage to materials provided to Newton Creative, all materials are held by Newton Creative at the sole risk of the Client and Newton Creative accepts no liability for any loss or damage to materials supplied by the Client and the Client is advised to obtain adequate insurance in respect of such materials. 10.2. Subject to the terms of clause 9.3 above film chromalin proofs and other materials used in the production of types plates film-setting positive and the like shall remain the exclusive property of Newton Creative

## 11. LIMITATION OF LIABILITY

11.1. Newton Creative will have no liability in respect of any statement made by Us or by another on behalf of Newton Creative before the date of the Contract. 11.2. In the event of non-performance or breach of any term of this Contract Newton Creative shall have no liability whatsoever in contract, tort (including negligence) or otherwise for any loss of goodwill business revenue or profits anticipated savings or wasted expenditure (whether reasonably foreseeable or not) or indirect or consequential loss suffered by the Client. 11.3. The maximum aggregate liability of Newton Creative under or in connection with this Contract, whether in contract tort (including negligence) or otherwise will be limited to the Contract Fee. 11.4. This clause 11 shall have effect subject to any limitation imposed by any applicable law, including without limitation that this clause shall not apply to liability in respect of fraud or personal injury or death due to negligence of Newton Creative.

## 12. FORCE MAJEURE

Every effort will be made to carry out the Contract but its performance is subject to suspension or cancellation by Newton Creative or to such variations as Newton Creative may find necessary as a result of inability to secure labour, materials or suppliers, or as a result of any act of God act of terrorism illness accident war strike lockout or any other labour dispute fire flood drought legislation or other cause beyond the control of Newton Creative.

## 13. MATERIALS SUPPLIED BY THE CLIENT

13.1. Newton Creative may reject any material supplied by the Client which appears unsuitable or illegible and the Client agrees that additional costs will be added to the Fee to cover all additional work required by Newton Creative in respect of such material. 13.2. Where inadequate materials are supplied by the Client liability for defective work will not be accepted by Newton Creative. 13.3. The quantities of materials supplied by the Client shall be adequate to cover normal spoilage.

## 14. TERMINATION

14.1. Newton Creative may terminate this Contract immediately upon written notice to the Client in the event that the Client: 14.1.1. is in material breach of any of its obligations under this Contract which is not capable of remedy or where such breach is capable of remedy has not remedied the same within fifteen (15) days of being given notice in writing specifying the breach or some other time as Newton Creative shall reasonably determine; 14.1.2. becomes or threatens to become subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, becomes or threatens to become subject to any bankruptcy petition or order, has or threatens to have a receiver manager or administrator or administrative receiver appointed over its assets undertakings or income has passed a resolution for its winding-up or has a petition presented to any court for its winding-up or for an administration order or anything analogous to the above occurs in respect of such other party; or 14.1.3. ceases or threatens to cease to trade. 14.2. In addition to its rights set out at clause 14.1 above, Newton Creative in its absolute discretion and without prejudice to any other right or remedy may:- 14.2.1. refuse to proceed further with and charge for: 14.2.1.1. all or any Services already carried out (whether or not the same shall have been completed); and 14.2.1.2. all or any materials purchased on the Client's behalf; 14.2.2. choose to exercise a lien over all of the Deliverables and the Client's property in its possession in respect of all unpaid debts due from the Client and shall on the expiry of fourteen (14) days notice to the Client be entitled to dispose of such goods and property in such manner and at such price as it deems fit.

## 15. CONSEQUENCES OF TERMINATION

15.1. Immediately upon the termination of this Contract pursuant to clause 14 above:- 15.1.1. Any licence granted pursuant to clause 6.1.2 above shall terminate and all rights shall revert to Newton Creative and the Client shall have no further rights to use the Deliverables; 15.1.2. the Client shall fully pay Newton Creative all monies due and owing in respect of the provision of the Services (including all out-of-pocket and third-party expenses) which are outstanding as at the date of termination. 15.2. Termination of the Contract for whatever reason shall not prejudice or affect the rights or remedies of either party accrued prior to such termination.

## 16. CONFIDENTIALITY

The Client shall not without the written consent of Newton Creative during the Contract period or any time afterwards make use for its own purposes or disclose to any person (except as may be required by law or to its professional advisers for the purposes of this Contract) any confidential secret or proprietary information or such similar information provided by Newton Creative to the Client pursuant to the Contract or prepared by Newton Creative pursuant to the Contract all of which information shall be deemed to be and to remain confidential and proprietary.

## 17. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

A person or company who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any right under it and the provisions of the Act are expressly excluded.

## 18. LAW

The Contract shall be governed by the Laws of England and Wales and the courts of England shall have competent jurisdiction.