

rebellion

Advertising Services - Standard Terms and Conditions

1 Interpretation

1.1 Definitions

Advertising Standards: any present or future applicable code of practice of the Committee of Advertising Practice or Broadcast Committee of Advertising Practice, or adjudication of the Advertising Standards Authority, and includes any applicable modification, extension or replacement thereof in force from time to time, together with other UK laws, statutes and regulations which are directly applicable to the Services.

Agency: Rebellion London Limited registered in England and Wales with company number 09730987

Agency Materials: means any artwork, copy, models, designs, photographs, commercial, feature film, character, music, voice over, sound recording, performance, book, painting, logo, or any other material protected by Intellectual Property Rights, and including any software, specifically created by the Agency for the Client as part of the Services (including any materials adapted, modified or derived from the Client Materials).

Agency Proprietary Materials: means materials in relation to which the Intellectual Property Rights are owned by (or licensed to) the Agency and which are: (i) in existence prior to the date on which it is intended to use them in the Services; or (ii) created by or for the Agency outside of the Services and which are intended to be reused across its business.

Authorised Client Approver: those personnel of the Client notified to the Agency or whom the Agency might reasonably assume have the authority to bind the Client in matters relating to the Contract.

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

Client Materials: any data, client equipment, computer systems, software, documents and any other materials or information owned by or licensed to the Client which are to be used by the Agency in the Services.

Commencement Date: has the meaning set out in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.5.

Confidential Information: information received by a party relating to the other party, its clients, customers, businesses, business plans or affairs, which information is proprietary and confidential to that other party, and including any document marked "Confidential", or any information which the recipient has been informed is confidential or which it ought reasonably to expect the other party would regard as confidential, but excludes any information which: (i) at the time of receipt by the recipient is in the public domain; (ii) subsequently comes into the public domain through no fault of the recipient, its officers, employees or agents; (iii) is lawfully received by the recipient from a third party on an unrestricted basis; and/or (iv) is already known to the recipient before receipt hereunder.

Contract: the contract between the Agency and the Client for the supply of Services, comprising these Conditions and the SOW.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

Client: the entity named in the SOW who purchases the Services from the Agency.

Client Default: has the meaning set out in clause 4.2.

Data Protection Legislation: means: (i) in EU countries, the EC Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (95/46/EC) and all

local laws or regulations giving effect to this Directive; and/or (ii) in non-EU countries, any similar or equivalent laws, regulations or rules relating to information or data about individuals.

Deliverables: the deliverables set out in the SOW to be produced by the Agency for the Client.

Expenses: reasonable travelling, hotel, subsistence and other expenses incurred by the Agency in connection with the supply of Services (but excluding Third Party Costs).

Fees: the Agency fees for the Services to be provided under the Contract in accordance with its rate card or as may otherwise be specified in the SOW (excluding Third Party Costs and Expenses).

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 Client's order for Services as set out in the Client's purchase order form or other written acceptance of the Agency's quotation.

Services: the advertising services, including the Deliverables, to be supplied by the Agency to the Client as set out in the SOW.

SOW: the scope of work containing the description or specification of the Services and provided in writing by the Agency to the Client.

Term: the duration of the Contract as set out in the SOW and subject to clause 12 of these Conditions.

Territory: means the United Kingdom, unless expressly specified otherwise in the SOW, and publication and marketing on globally accessible media such as the internet shall not mean that the Territory is deemed to be world-wide.

Third Party Costs: all third party costs incurred by the Agency on behalf of the Client in performing the Services, including production work such as illustrations, film production, artwork and photography, the services of models and other performers, recordings, animation, print and post production work and all costs incurred in taking legal or other advice, searches and enquiries.

Third Party Materials: means those materials which are either commissioned by the Agency from third parties and incorporated into the Deliverables, or which have been created by a third party and which are in existence at the time it is desired to make use of them for inclusion in the Deliverables.

1.2 Interpretation

- (a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (b) 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.
- (c) A reference to writing or written includes email unless otherwise stated.

2 Basis of Contract

2.1 The Order constitutes an offer by the Client to purchase the Services in accordance with these Conditions and shall only be deemed accepted when the Agency issues written acceptance of the Order at which point the Contract shall come into existence (Commencement Date) and continue for the Term.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Client may seek to impose or incorporate.

3 Supply of Services

3.1 The Agency shall:

- (a) supply the Services to the Client in the Territory, materially in accordance with the SOW;
- (b) use reasonable endeavours to meet any performance dates specified in the SOW; and
- (c) 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.

3.2 The Agency warrants to the Client that the Services will be provided using reasonable care and skill.

3.3 The Agency acts in all its contracts with third parties in respect of the provision of Services as a principal at law.

3.4 The Agency will not be obliged to perform any work on behalf of the Client until a SOW has been signed by both parties.

4 Client's Obligations

4.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides for incorporation in the SOW are complete and accurate;
- (b) co-operate with, and ensure that its other suppliers and agencies co-operate with, the Agency in all matters relating to the Services; and
- (c) promptly provide the Agency with such information and Client Materials as the Agency may reasonably require in order to supply the Services, ensure that such materials and information are accurate in all material respects and that it has all rights and licences in place to enable their use by the Agency.

4.2 If the Client does not fulfil its obligations under or in connection with the Contract (including its payment obligations), then to the extent that such failure prevents the Agency from performing any Services and/or providing any Deliverables in accordance with the Contract, the Agency will be relieved of its obligations to the Client and shall not be liable for any losses incurred by the Client as a result of any such failure.

5 Approvals

5.1 Where a party is asked to give approval under or in connection with the Contract, such approval shall not be unreasonably withheld or delayed.

5.2 The Client's approval of costs estimates and creative treatments will be the Agency's authority to enter into contracts with relevant third parties and to prepare Deliverables.

5.3 In the event of any delay or failure of an Authorised Client Approver giving approvals requested under or in connection with the Contract, the Agency will not be liable for any resulting delays or adverse impact caused to the delivery of the Services.

6 Amendments & Cancellations

6.1 In the event that either party wishes to make any material amendment to the SOW, any such amendment shall be subject to the agreement of both parties in writing.

6.2 The Client may request the Agency to cancel any Services, including any plans, schedules or work in progress, and the Agency will take reasonable steps to comply with any such request provided that it is able to do so within its contractual obligations to suppliers.

6.3 In the event of any cancellation pursuant to clause 6.2, the Client will reimburse the Agency for all Fees as would have been payable had the Services not been cancelled, together with any Third Party Costs and Expenses incurred by the Agency or to which the Agency is committed as well as any charges or other expenses or costs imposed on the Agency by third parties arising from the cancellation, including all sums agreed to be paid by the Agency to a production company.

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

7 Charges and Payment

7.1 The Agency shall invoice the Client for, and the Client shall pay, all Fees, Expenses and Third Party Costs.

7.2 The Fees shall be payable on a time and materials basis, calculated in accordance with the Agency's standard daily fee rates based on an eight-hour day worked on Business Days.

7.3 The Fees do not cover the performance of services which are outside of a SOW nor do they cover the performance of Services outside the Territory. If any such services are required, they shall be subject to the written agreement of the Agency and payable on the basis set out in clause 7.2.

7.4 The Agency reserves the right to increase its standard daily fee rates provided that such rates cannot be increased more than once in any 12-month period. The Agency will give the Client written notice of any such increase 3 months before the proposed date of the increase.

7.5 The Fees, Expenses and Third Party Costs will be invoiced in accordance with the payment terms set out in the SOW and shall be payable within 14 days of the date of the relevant invoice, provided that in the event that any Third Party Costs require payment in advance or sooner than within 14 days of the date of invoice, the Client shall pay such costs within the period set out in the relevant invoice.

7.6 All sums stated in the Contract or in any SOW, quotation or estimate exclude VAT and any other applicable sales tax (unless otherwise stated) which shall also be payable by the Client at the rate prevailing from time to time.

7.7 If the Client fails to make any payment due to the Agency under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Santander UK plc'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 Client shall pay the interest together with the overdue amount.

7.8 If the Client is overdue with any payment hereunder, then without prejudice to the Agency's other rights or remedies:

- (a) the Agency shall have the right to suspend performance of the Services until it has received payment of the overdue amount and any accrued interest; and/or
- (b) the Agency shall have the right to terminate the applicable SOW immediately upon written notice to the Client.

7.9 Where a surcharge is levied by a supplier against the Agency due to late payment and this results from late payment by the Client, the Client shall immediately reimburse to the Agency the amount of such surcharge, together with any accrued interest or other sum charged by the supplier in respect of the overdue amount.

7.10 Where a late copy charge is levied by a media owner against the Agency due to copy being delivered late and this does not result from the Agency's negligent or wilful act or omission, then the Client shall immediately reimburse the amount of such late copy charge to the Agency.

7.11 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

8 Intellectual Property Rights

8.1 Subject to the remaining provisions of this clause 8 and subject to the Agency receiving payment of all Fees attributable to the Agency Materials the Agency hereby assigns (and in the case of copyright, by way of a present assignment of future copyright) all Intellectual Property Rights in the Agency Materials which are capable of being assigned together with the right to sue for past infringement of the Intellectual Property Rights in the Agency Materials. If the Client wishes to use any Deliverables outside of the Territory, then such use shall be subject to agreement of further fees.

8.2 All Intellectual Property Rights in the Agency Proprietary Materials shall be owned by and remain the property of and vested in the Agency. Subject to the Agency receiving payment of all Fees attributable to the Agency Proprietary Materials licensed under this clause, the Agency hereby grants to the Client a licence to use such Agency Proprietary Materials as are included in the Deliverables, in the Territory, for the period of time and for the purposes set out in the relevant SOW.

8.3 The Agency shall obtain licences or consents in respect of Third Party Materials in order that the Client can use Third Party Materials for the purposes set out in the SOW. The Agency shall notify the Client of any restrictions on usage in respect of such Third Party Materials, and the Client shall comply with any such restrictions and shall indemnify the Agency against any Losses suffered by the Agency as a result of the Client breaching any such restrictions.

8.4 The Agency shall ensure that all Moral Rights in the Agency Materials and Third Party Materials included in the Deliverables are waived (or where not lawfully possible to waive Moral Rights, that Moral Rights are not asserted in respect of the Agency Materials).

8.5 The Agency shall be entitled during and after the Term to use any Deliverables which have been broadcast, published, distributed or otherwise made available to the public, and the Client's name and logo, for the purposes of promoting its work and its business including on the Agency's website, in credentials pitches, in its showreel and for entering awards and industry competitions.

9 Intellectual Property Rights

9.1 The Agency warrants that:

- (a) it has full power and authority to enter into the Contract;
- (b) subject to clause 9.3 the use of the Deliverables by the Client in accordance with the Contract and for the purposes set out in the SOW will not infringe the copyright of any third party;
- (c) to the best of its knowledge and belief and subject to clause 9.3, as at the date of their delivery the use of the Deliverables in accordance with this Agreement for the purposes set out in the SOW will comply with all Advertising Regulations in the UK, save that where the Client's business involves any industry sector which is subject to its own industry

specific Advertising Regulations or other code, regulation, statute or law (collectively "Specialist Advertising Regulations") the Client shall be responsible for ensuring that the Deliverables are compliant with such Specialist Advertising Regulations.

9.2 All warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise are hereby excluded to the fullest extent permitted by law, including any condition of satisfactory quality or fitness for a particular purpose.

9.3 The Client releases the Agency from any liability under or in connection with the Contract and hereby indemnifies the Agency against any Losses incurred by the Agency to the extent that such Losses arise as a result of:

- (a) the Deliverables infringing third party Intellectual Property Rights, breaching Advertising Regulations or other laws and regulations, where the Agency had previously notified the Client of a specific risk that the Deliverables infringed third party Intellectual Property Rights or breached Advertising Regulations or other laws and regulations; and/ or
- (b) the incorporation of Client Materials into the Deliverables.

10 Client Warranties

10.1 The Client warrants that:

- (a) it has full power and authority to enter into the Contract;
- (b) the Client Materials will not, when used in accordance with this Agreement and any written instructions given by the Client, infringe third party copyright;
- (c) to the best of its knowledge and belief, the Client Materials will comply with all applicable laws and regulations including all Advertising Regulations; and
- (d) the Client Materials are accurate and complete in all material respects.

11 Limitation of Liability

11.1 Nothing in the Contract shall exclude or in any way limit either party's liability for fraud, death or personal injury caused by its negligence or any other liability to the extent such liability may not be excluded or limited as a matter of law.

11.2 Subject to clause 11.1, the Agency shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of damage to goodwill; and
- (g) any indirect or consequential loss.

11.3 Subject to clause 11.1, the Agency's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall in no event exceed 100% of the total Charges paid under the Contract.

11.4 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.

11.5 This clause 11 shall survive termination of the Contract.

12 Termination

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

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting its other rights or remedies, the Agency may terminate the Contract with immediate effect by giving written notice to the Client if:

- (a) the Client fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
- (b) there is a change of Control of the Client.

13 Consequences of Termination

On termination of the Contract for any reason:

- (a) the Client shall immediately pay to the Agency all of the Agency's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted (including Third Party Costs and Expenses), the Agency shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of the Agency Materials and any Deliverables which have not been fully paid for;
- (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, 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
- (d) clauses which expressly or by implication survive termination shall continue in full force and effect.

14 Data Protection

14.1 Each party warrants to the other that it is and will continue to be appropriately notified under the terms of any applicable Data Protection Legislation and any other relevant data protection laws, legislation and regulation. For the purposes of this clause, "personal data" and "processes" shall have the meanings given under Data Protection Legislation.

14.2 Where the Agency processes personal data on behalf of the Client under the Contract, then the Agency shall:

- (a) process such data solely in accordance with the Client's instructions from time to time and in accordance with its duties under Data Protection Legislation;
- (b) adopt and maintain reasonably appropriate security and organisational measures against unauthorised, unlawful processing, accidental loss or destruction of such data;
- (c) notify the Client promptly in the event that receives any request from a data subject for access to that person's personal data, where such personal data is processed by or on behalf of the Agency as part of the Services; and
- (d) notify the Client promptly in the event that it receives any complaint, notice or communication that relates directly to its compliance with Data Protection Legislation and/or the processing of personal data under or in connection with the Contract.

14.3 The Agency shall not transfer personal data to be processed on behalf of the Client outside the European Economic Area without the prior approval of the Client.

14.4 The Client warrants and undertakes that it has all necessary rights to provide personal data to the Agency and to require the Agency to process personal data on its behalf.

15 Advertising standards

15.1 Both parties acknowledge that they have a responsibility to comply with all Advertising Regulations.

15.2 The parties will co-operate with each other in ensuring that suitable objective factual product and other information is available as required to satisfy the requirements of any applicable Advertising Regulation.

16 General

16.1 Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

16.2 Assignment and other dealings

- (a) The Agency may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not, without the prior written consent of the Agency, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

16.3 Confidentiality

- (a) Each of the parties undertakes to maintain the confidentiality of the other party's Confidential Information at all times and to use no less adequate measures than it uses in respect of its own confidential information to keep the other party's Confidential Information reasonably secure.
- (b) Neither party shall at any time, whether during the Term or at any time thereafter, without the prior written approval of the other party, use, disclose, exploit, copy or modify any of the other party's Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the exercise of its rights and/or the performance of its obligations in connection with the Contract.
- (c) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (d) The Client acknowledges and agrees that any identifiable and original idea or concept presented by the Agency in relation to any promotion or advertising campaign developed by the Agency shall be acknowledged as being available only for such promotion or campaign and shall not be used for any other purposes whatsoever without the Agency's express prior written approval. Even where no promotion or campaign is agreed, the ideas and concepts presented to the Client shall remain strictly confidential and shall not be used in any way, including communication to any third party, without the Agency's prior written approval.

16.4 Entire agreement

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

16.5 Variation

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16.6 Waiver

A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.

16.7 Severance

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.

16.8 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office 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 pre-paid first class post or other next working day delivery service, commercial courier or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.8(a); 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 email, one Business Day after transmission.

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

16.9 Third parties

No one other than a party to the Contract shall have any right to enforce any of its terms.

16.10 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

16.11 Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

17 Insurance

17.1 Public Liability

The Agency maintains insurance pertaining to Public Liability insurance as required by law.

17.2 Employer Liability

The Agency maintains insurance pertaining to Employer Liability insurance as required by law.

17.3 Professional Indemnity

The Agency maintains insurance pertaining to Professional Indemnity insurance with cover of no less than £1,000,000 GBP.

17.4 Specific Cover

The Agency will consider additional levels of cover and specialist insurance at the request of the Client, subject to consultation with legal advisors and insurance underwriters. Any additional costs relating to such a request shall be borne by the Client.

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