

Karas Deckchairs

General Terms and
Conditions

June 2023

Section A – General Terms and Conditions for Products

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.6.

Contract: the contract between the Supplier and the Customer for the sale and purchase of Goods in accordance with these Conditions.

Customer: the person, firm or company who purchases the Goods from the Supplier.

Force Majeure Event: has the meaning given to it in clause 13.1(a).

Goods: the Goods (or any part of them) as set out in the purchase order.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form OR overleaf OR in the Customer's written acceptance of the Supplier's quotation, or overleaf as the case maybe.

Supplier: **Karas Deckchairs** a Partnership in England, whose registered office address is Ground Floor, Unit 66 Glenmore Business Park, PO19 7BJ

1.2 Construction. In these Conditions, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or

permitted assigns;

(c) a reference to a statute or statutory provision is a reference to such statute or statutory provision 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;

(d) 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; and

(e) a reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These conditions shall apply to all agreements between the Customer and the Supplier.

2.2 A quotation for the Goods given by the Supplier shall not constitute an offer. In any event, a quotation shall only be valid for a period of Ten Business Days from the date of issue.

2.3 The Customer's order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order, or if earlier we start to process the Order, at which point and on which date the Contract shall come into existence.

2.4 Any amendments or additions to orders must be received before the Goods are loaded for delivery.

2.5 It is the Customer's responsibility to check the order acknowledgement to ensure that the Goods being purchased

are required and that the price and delivery details are correct.

2.6 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

2.7 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any illustrations or descriptions contained in the Supplier's catalogues, brochures or websites are produced or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.8 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. GOODS

3.1 The Supplier reserves the right to amend the specification of the goods if required by any applicable statutory or regulatory requirement.

4. INSPECTION

4.1 The Customer shall inspect the Goods at the place and time of unloading or collection but nothing in these Terms shall require the Customer to break packaging and/or unpack Goods which are intended to be stored for use.

4.2 The Customer must advise the Supplier by telephone immediately and also provide written notice within Three days of unloading of any claim for short delivery.

4.3 If the Customer does not give the notice in the time limits set out in 4.2 above, the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.

4.4 The Customer shall not be entitled, and shall irrevocably and unconditionally waive any rights to reject the Goods or claim any damages whatsoever, for short delivery howsoever caused in not complying with clauses 4.2 and 4.3 above.

4.5 The Supplier's liability for short delivery is limited to making good the shortage.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer upon completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- a) The Goods;
- b) Any other goods that the Supplier has supplied to the Customer.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- a) Hold the Goods on a fiduciary basis as the Supplier's Bailee;
- b) Store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the

suppliers property;

c) Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

d) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

e) Give the Supplier such information relating to the Goods as the Supplier may require from time to time

5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any insolvency proceedings or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. PRICE AND PAYMENT

6.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list relating to the country of destination shall apply. All prices quoted are valid for 30 days only or such lesser period as shall be stated by the Seller on

the face of the relevant quotation or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

6.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

6.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller are exclusive of carriage charges.

6.4 The price is exclusive of any applicable value added tax that the Buyer shall be additionally liable to pay to the Seller.

6.5 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time before or after delivery of the Goods. All invoices shall be due on receipt unless otherwise agreed to in writing by both parties

6.6 If the Buyer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

6.6.1 cancel the contract or suspend any further deliveries to the Buyer;

6.6.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and

6.6.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above HSBC base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6.7 In the event that the Seller shall cancel the contract under the provisions of Clause 5.3.1 above the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation. Without prejudice to the generality of the foregoing, at the option of the Seller, the Seller shall be entitled to require the Buyer to pay to the Seller by way of liquidated damages an amount equivalent to 50% of the invoice value of the contract so cancelled. In the event of the Seller so requiring, the Buyer shall pay such amount to the Seller (without any deduction) within seven days of receiving from the Seller written notification of the amount required to be paid. The Seller and the Buyer hereby agree that such amount represents a genuine pre-estimate of the monetary value of the loss and damage

likely to be suffered by the Seller as a result of such cancellation.

7. DELIVERY

7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

7.2 The Supplier will use all reasonable endeavours to keep to agreed delivery dates which are quoted on the basis of existing commitments but will not be liable for delay in delivery however caused. The time of the delivery shall not be of the essence.

7.3 If the Goods are supplied with packing materials or crates, these are non-returnable and it is the Customers responsibility to dispose of them as appropriate.

7.4 Goods are subject to delivery and packing charges.

7.5 The Supplier shall not be liable for loss or damage to the Goods during transit unless the Supplier is notified by the Customer within Four days of delivery in writing.

7.6 No claim will be eligible for any compensation without being signed for as

damaged when Goods are delivered at the agreed place of delivery.

7.7 The Supplier shall not be liable for the re-delivery of the Goods where the Customer is not present to sign for or accept delivery. Re-delivery or depot collection costs shall be borne by the Customer.

7.8 Delivery of the Goods will be deemed complete once the Goods arrive at the Delivery Location.

7.9 Any dates quoted for delivery are approximate only and the time of delivery is not of the essence. The supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customers failure to provide the supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.10 If the Supplier fails to deliver the Goods as agreed, then its liability shall be limited as per clauses 12.1 to 12.4 (inclusive).

7.11 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract.

7.12 The price agreed includes delivery charges but the Supplier may make an additional charge if it incurs further costs or expenses such as (but not limited to):

a) Complying with the Customer's request for delivery outside the Suppliers normal delivery pattern or by trading by instalments

b) Orders of small value which are not economical for the Supplier to deliver

7.13 If the Goods are to be deposited other than on the Customer's premises, the Customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons and property.

7.14 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and payment in full of all sums due from the Buyer to the Seller whether under the Contract or by virtue of any other liability of the Buyer to the Seller.

8. CANCELLATION AND RETURNS

8.1 Subject to the provisions of clause 8, the Customer may not cancel any order that has been made and paid for unless agreed by the Supplier in writing.

8.2 The Supplier will not agree to the cancellation of an order if processing has commenced. The Customer will be liable to pay the full cost of the order.

8.3 Any refund will be subject to collection/re-delivery costs if the Supplier is required to collect or arrange collection of the Goods.

8.4 The Supplier does not operate a cooling off period for Customers (being a Partnership or Company) and no refund will be granted.

9. QUALITY

9.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification subject to such tolerances as are reasonable and as are normally accepted in the trade and will be free from defects in material and workmanship at the time of delivery.

9.2 The above warranty is given by the Seller subject to the following conditions:

9.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer:

9.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alternation or repair of the Goods without the Seller's approval.

9.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

9.2.4 the above warranty does not extend to Goods not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

9.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or

common law are excluded to the fullest extent permitted by law.

9.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these Conditions.

9.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 30 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

9.6 Any claim by the Buyer which is based on short delivery or non-delivery shall be notified to the Seller in Writing (in the case of short delivery) within 7 days of delivery and (in the case of non-delivery) within 30 days of the estimated delivery date. If the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject any goods that have been delivered and the Seller shall have no liability for such short delivery or non-delivery. These terms do not affect and are in addition to any rights arising from consumer related law the Buyer may exercise.

9.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods or (refund to the Buyer the price of the Goods) (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.

9.8 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

9.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

9.9.1 Act of God, explosion, flood, tempest, fire

or accident;
9.9.2 war or threat of war, sabotage, insurrection, civil disturbance, or requisition;
9.9.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
9.9.4 import or export regulations or embargoes;
9.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
9.9.6 difficulties in obtaining raw materials labour, fuel, parts or machinery;
9.9.7 power failure or breakdown in machinery.

10. SUITABILITY

10.1 The Customer assumes responsibility for the Goods being suitable for the purpose for which they are intended.

11. STORAGE

11.1 If the Goods are ready for delivery but are held back at the Customer's request or if the Customer fails to accept delivery, the Supplier may require the Customer to pay a reasonable storage charge (as determined by the Supplier) after the expiry of Seven days from the date of the Customer being notified that the Goods are ready for dispatch.

12. LIMITATION OF LIABILITY:

12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
(b) fraud or fraudulent misrepresentation
(c) breach of the terms implied by Section 12 Sale of Goods Act 1979;
(d) defective products under the Consumer Protection Act 1987; or
(e) any matter in respect of which it would be unlawful for the supplier to exclude or restrict liability.

12.2 Subject to clause 12.1:

(a) The Supplier shall not be liable for any consequential or special loss arising out of any breach of condition, warranty or contract on the part of the Supplier in respect of the Goods. The Supplier's liability for any such breach in respect of the Goods shall be limited to their net invoice value or (at the Supplier's discretion) to replacement of the Goods.

(b) the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12.3 The Supplier shall not be liable:

a) If any problem with the Goods arises from wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods, failure to follow British Standard or industry instructions relevant to the Goods, or storage of the Goods in unsuitable conditions (but this sub clause shall not apply to any act or omission on the Supplier's part).

b) Unless after discovery of the problem with the Goods the Supplier is given a reasonable opportunity to inspect the goods before they are used, or in any way interfered with.
c) If problems with the Goods would have been apparent on a reasonable inspection in accordance with these Terms at the time of unloading, unless the Customer's notification were made in accordance with these Terms.
d) If the problem with the Goods is discovered after 14 days from the date of delivery.
e) If in any case the problem with the Goods is discovered more than 14 days from the date of delivery; the Supplier's liability for any problems with the Goods will be further limited to such rights against the manufacturer or the third party, who manufactured the Goods as the Supplier may have.
f) The Customer unconditionally, fully and effectively, indemnifies the Supplier against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred by the Supplier in connection with, or paid, or agreed to be paid by in settlement of any claim by a third party arising from the supply or use of the Goods. The indemnity will be reduced in proportion to the extent that such loss, damage, costs and expenses are due to the Supplier's negligence. 12.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

13. FORCE MAJEURE

13.1 Force majeure:

(a) For the purposes of this Contract, Force Majeure Event means an event

beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

(b) Neither party shall be liable to the other party as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14. GENERAL

14.1 Assignment and subcontracting:

(a) The Supplier may at any time assign, transfer, 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.

(b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract, without the prior written consent of the Supplier.

14.2 Notices:

(a) Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if a company) or its principal place of business or residence (in any other case) or such address as that party may have specified to the other party

in writing in accordance with this clause, and shall be delivered personally, sent by prepaid first class post, recorded delivery, commercial courier or fax.

(b) Any notice or other communication shall be deemed to have been received if delivered personally, when left at such address referred to in clause 14.2(a) above, if sent by prepaid first-class post or recorded delivery, at 9.00am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next 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.

14.3 Waiver and cumulative remedies:

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.4 Severance:

(a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.5 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.

14.7 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law.

14.8. Communication

The merchant will contact the buyer via means of distance communication only if the buyer does not explicitly object to this. The merchant's advertising emails will contain the following components: they will be marked transparently and unambiguously as advertising messages; the sender-trader will be clearly visible; various campaigns, promotions and other marketing techniques will be marked as such. The conditions for participation in them will also be clearly defined, and the method of unsubscribing from receiving advertising messages will be clearly presented; the buyer's wish not to receive advertising messages will be explicitly

respected by the merchant. The merchant's advertising messages will be clearly visible and clearly separated from games and competitions.

14.9 Complaints and disputes

14.9.1 The merchant complies with the applicable regulations in the field of consumer protection and has an effective system for handling complaints and a certain person with whom the buyer can contact by phone or e-mail in case of problems. The complaint can be submitted by the buyer to the e-mail address of the merchant. The appeal procedure is confidential. The merchant will confirm within 5 working days that he has received the complaint and inform the buyer how long he will process it and keep him informed about the progress of the procedure. The merchant will do his best to resolve any disputes amicably. If an amicable settlement of the dispute is not reached, the competent court of jurisdiction shall have jurisdiction to resolve all disputes between the merchant and the buyer. The merchant and the buyer, as participants in electronic commerce, mutually recognize the validity of electronic messages in court.

14.9.2 These Rules and Conditions of Business and all disputes between the merchant and the buyer are governed by English substantive and procedural law, without the application of the rules of private international law, which would indicate the application of any other law.

14.10. Changes in the rules and terms of conditions of business

14.10.1 In the event of changes in the regulations governing the operation of online stores, data protection and other areas related to the operation of the merchant's online store, and in the event of changes in its own business policy, the merchant may change and / or supplement the rules and terms of conditions of business and inform buyers in an appropriate manner. Any change or amendment to the General rules and terms of conditions of business shall enter into force and apply upon the expiration of the 8-day period from the publication of the changes and / or amendments. If an amendment and / or amendment to the rules and terms of conditions of business is necessary to comply with regulations, these amendments and / or amendments may exceptionally enter into force and apply in a shorter period of time.

14.10.2 The buyer who does not agree with the changes and / or amendments to these rules and terms of conditions of business must cancel his registration within 8 days of the publication of the notice on changes and / or amendments to the rules and terms of conditions of business, otherwise after this period the contrary proof is considered it is not permitted for the user to accept changes and / or amendments to the rules and terms of conditions of business. The cancellation of the registration is done by the buyer notifying the merchant of the cancellation in a written statement.

Section B – General Terms and Conditions for Design Services

Definitions

As used herein and throughout this Agreement:

1.1 *Agreement* means the entire content of this Basic Terms and Conditions document, the Proposal document(s), Schedule A, together with any other Supplements designated below, together with any exhibits, schedules or attachments hereto.

1.2 *Client Content* means all materials, information, factual, promotional, or other advertising claims, photography, writings and other creative content provided or required by Client for use in the preparation of and/or incorporation in the Deliverables.

1.3 *Copyrights* means the property rights in original works of authorship, expressed in a tangible medium of expression, as defined and enforceable under Copyright Law.

1.4 *Deliverables* means the services and work product specified in the Proposal to be delivered by Designer to Client, in the form and media specified in the Proposal.

1.5 *Designer Tools* means all design tools developed and/or utilized by Designer in performing the Services,

including without limitation pre-existing and newly developed software including source code, Web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as Website design, architecture, layout, navigational and functional elements.

1.6 *Final Deliverables* means the final versions of Deliverables provided by Designer and accepted by Client.

1.7 *Final Works* means all creative content developed by Designer, or commissioned by Designer, exclusively for the Project and incorporated in the Final Deliverables, including, but not limited to, any and all visual elements, graphic design, illustration, photography, typographic treatments and text, modifications to Client Content, and Designer's selection, arrangement and coordination of such elements together with Client Content and/or Third Party Materials.

1.8 *Preliminary Works* means all creative content including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and

documents developed by Designer and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Works.

1.9 *Project* means the scope and purpose of the Client's identified usage of the work product as described in the Proposal.

1.10 *Services* means all services and the work product to be provided to Client by Designer as described and otherwise further defined in the Proposal.

1.11 *Third Party Materials* means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.

1.12 *Trademarks* means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client.

1.13 *Working Files* means all underlying work product and digital files utilized by Designer to create the Preliminary Works and Final Works other than the format comprising the Final Deliverables.

2. Proposal

The terms of the Proposal shall be effective for seven (7) calendar days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Proposal, together with any related terms and conditions and deliverables, may be subject to amendment, change or substitution.

3. Fees and Charges

3.1 *Fees*. In consideration of the Services to be performed by Designer, Client shall pay to Designer fees in the amounts and according to the payment schedule set forth in the Proposal, and all applicable taxes, even if calculated or assessed subsequent to the payment schedule.

3.2 *Expenses*. Client shall pay Designer's expenses incurred in connection with this Agreement as follows: (a) incidental and out-of-pocket expenses including but not limited to costs for telephone calls, postage, shipping, overnight courier, typesetting, blueprints, models, presentation materials, photocopies, computer expenses, parking fees and tolls, and taxis at cost plus Designer's standard markup of five percent (5%), and, if applicable, a mileage reimbursement at 32p.per mile; and (b) travel expenses including transportation, meals, and lodging, incurred by Designer with Client's prior approval.

3.3 *Additional Costs*. The Project pricing includes Designer's fee only. Any and all outside costs including, but not limited to, equipment rental, photographer's costs and fees, photography and/or artwork licenses, prototype production costs, and online access or hosting fees, will be billed to Client unless specifically otherwise provided for in the Proposal.

3.4 *Invoices/Payments*. Client shall pay all invoices within seven (7) calendar days of the invoice date. A monthly interest of 1.5 percent may be charged on all overdue balances. Payments will be credited first to late payment charges and next to the unpaid balance. Client shall be responsible for all collection or legal fees necessitated by lateness or default in payment. Designer reserves the right to

withhold Deliverables if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this Agreement are conditioned upon receipt of payment in full, including any outstanding Additional Costs, Taxes, Expenses, Fees, Charges, or the cost of Changes.

4. Changes

4.1 General Changes. Unless otherwise provided in the Proposal, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at Designer's standard hourly rate. Such charges shall be in addition to all other amounts payable under the Proposal, despite any maximum budget, contract price or final price identified therein. Designer may extend or modify any delivery schedule or deadlines in the Proposal and Deliverables as may be required by such Changes.

4.2 Substantive Changes. If Client requests or instructs Changes that amount to a revision of a substantive nature with regards to time taken to produce the Deliverables, and or the value or scope of the Services, Designer shall be entitled to submit a new and separate Proposal to Client for written approval. Work shall not begin on the revised services until a fully signed revised Proposal and, if required, any additional retainer fees are received by Designer.

4.3 Timing. Designer will prioritize performance of the Services as may be necessary or as identified in the Proposal, and will undertake commercially reasonable efforts to perform the Services

within the time(s) identified in the Proposal. Client agrees to review Deliverables within the time identified for such reviews and to promptly either (i) approve the Deliverables in writing or (ii) provide written comments sufficient to identify Client's concerns, objections or corrections. Designer shall be entitled to request written clarification thereof. Client acknowledges and agrees that Designer's ability to meet schedules is entirely dependent upon Client's prompt performance of its obligations to provide materials and written approvals and/or instructions pursuant to the Proposal and that any delays in Client's performance or Changes in the Services or Deliverables requested by Client may delay delivery of the Deliverables. Any such delay caused by Client shall not constitute a breach of this Agreement by Designer.

4.4 Testing and Acceptance. Designer will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to Client. Client, within three (3) business days of receipt of each Deliverable, shall notify Designer, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Proposal, or of any other objections, corrections, changes or amendments Client wishes made to such Deliverable. Any such written notice must be sufficient to identify with clarity any objection, correction or change or amendment, and Designer will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from Client, the Deliverable shall be deemed accepted.

4.5 Suspension Fee. Client acknowledges that Designer has reserved time exclusively to perform the Services. Accordingly, in the event Client causes a delay in the Services ("Client Delay"), Client shall pay to Designer, in addition to fees and expenses already incurred through the date of such Client Delay, a Suspension Fee equal to Designer's hourly fees for idle time caused by the Client Delay, unless Designer is able to secure other work for that time for the same or greater compensation. Client acknowledges that if Designer accepts other work because of a Client Delay, Designer may adjust time to complete the Services as necessary to accommodate such other work.

5. Client Responsibilities

Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:

- (a) coordination of any decision-making with parties other than the Designer;
- (b) provision of Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Proposal;
- (c) final proofreading and in the event that Client has approved Deliverables but errors, such as, by way of example, not limitation, typographic errors or misspellings, remain in the finished product, Client shall incur the cost of correcting such errors ; and
- (d) ensuring that all information and claims comprising Client Content are accurate, legal and conform to applicable standards in Client's industry.

6. Attribution/Promotions

Designer retains the right to reproduce, publish and display the Final Works, Deliverables, and Preliminary Works, to the extent they do not contain Client's Confidential Information, in Designer's portfolios and Websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Deliverables in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project, and, if applicable, the services provided to the other party on its Website and in other professional materials, and, if not expressly objected to, include a link to the other party's Website.

7. Confidential Information

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Project, except as may be required by a court or government authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

8. Relationship of the Parties

8.1 *Independent Contractor.* Designer is an independent contractor, not an employee of Client or any company affiliated with Client. Designer shall provide the Services under the general direction of Client, but Designer shall determine, in Designer's sole discretion, the manner and means by which the Services are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement.

8.2 *Design Agents.* Designer shall be permitted to engage and/or use third party designers or other service providers as independent contractors in connection with the Services ("Design Agents"). Designer shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this Agreement.

8.3 *No Solicitation.* During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any employee or Design Agent of Designer, whether or not said person has been assigned to perform tasks under this Agreement. In the event such employment, consultation or work-for-hire event occurs, Client agrees that Designer shall be entitled to an agency commission to be the greater of either (a) 25 percent of said person's starting salary with Client, or

(b) 25 percent of fees paid to said person if engaged by Client as an independent contractor. In the event of (a) above, payment of the commission will be due within 30 days of the employment starting date. In the event of (b) above, payment will be due at the end of any month during which the independent contractor performed services for Client. Designer, in the event of nonpayment and in connection with this section, shall be entitled to seek all remedies under law and equity.

8.4 *No Exclusivity.* The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties. Client is free to engage others to perform services of the same or similar nature to those provided by Designer, and Designer shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Designer.

9. Warranties and Representations

9.1 *By Client.* Client represents, warrants and covenants to Designer that (a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client Content, (b) to the best of Client's knowledge, the Client Content is accurate, legal, conforms to ethical standards of the Client's industry, does not infringe the rights of any third party, and use of the Client Content as well as any Trademarks in connection with the Project does not and will not violate the rights of any third parties, (c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and (d) Client shall comply with all laws and regulations as they relate to the Services and Deliverables.

9.2 By Designer.

- (a) Designer hereby represents, warrants and covenants to Client that Designer will provide the Services in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.
- (b) Designer further represents, warrants and covenants to Client that (i) except for Third Party Materials and Client Content, the Final Deliverables shall be the original work of Designer and/or Designer Agents, (ii) if the Final Deliverables include the work of Designer Agents, Designer shall have secured agreements from the Designer Agents granting all necessary rights, title and interest in and to the Final Deliverables sufficient for Designer to grant the intellectual property rights provided in this Agreement, and (iii) to the best of Designer's knowledge, the Final Works (excluding Client Content and Third Party Materials), and use of same in connection with the Project, will not violate the rights of any third parties. Client acknowledges that Designer will not conduct any type of intellectual property clearance search (e.g., copyright, trademark, utility patent or design patent searches). If Client or any third party authorized by Client modifies or uses the Deliverables outside the scope of rights granted in this Agreement, or otherwise in violation of this Agreement, all representations and warranties of Designer shall be void.
- (c) **Except for the express representations and warranties stated in this Agreement, Designer makes no warranties whatsoever.**

Designer explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the Project.

10. Indemnification/Liability

10.1 *By Client.* Client agrees to indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations or warranties under this Agreement. Under such circumstances Designer shall promptly notify Client in writing of any claim or suit; (a) Client has sole control of the defense and all related settlement negotiations; and (b) Designer provides Client with commercially reasonable assistance, information and authority necessary to perform Client's obligations under this section. Client will reimburse the reasonable out-of-pocket expenses incurred by Designer in providing such assistance.

10.2 *By Designer.* Designer agrees to indemnify, save and hold harmless Client from any and all damages, liabilities, costs, losses or expenses (collectively "Liabilities") arising out of any meritorious claim, demand, or action by a third party which is inconsistent with Designer's representations and warranties made herein, except in the event any such Liabilities arise directly as a result of Client's gross negligence or misconduct, provided that (a) Client promptly notifies Designer in writing of the claim; (b) Designer shall have sole

control of the defence and all related settlement negotiations; and (c) Client shall provide Designer with the assistance, information and authority necessary to perform Designer's obligations under this section. Notwithstanding the foregoing, Designer shall have no obligation to defend or otherwise indemnify Client for any claim arising out of or due to Client Content, Third Party Materials, modifications of or content added to the Deliverables by Client or third parties, improper or illegal use of Deliverables, use of Deliverables not authorized under this Agreement, or the failure to update or maintain Deliverables.

10.3 Settlement Approval. The indemnifying party may not enter into any settlement agreement without the indemnified party's written consent.

10.3 Limitation of Liability. The services and the work product of Designer are provided "as is." In all circumstances, the maximum liability of Designer, its directors, officers, employees, design agents and affiliates, to Client for damages for any and all causes whatsoever, and Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the total Project fee of Designer. In no event shall Designer be liable for any lost data or content, lost profits, business interruption or for any indirect, incidental, special, consequential, exemplary or punitive damages arising out of or relating to the materials or the services provided by Designer, even if Designer has been advised of the possibility of such damages, and notwithstanding the failure of essential purpose of any limited remedy.

. 11 Term and Termination

11.1 Term. This Agreement shall commence upon the Effective Date and shall remain effective until the Services are completed and delivered, or otherwise terminated as set forth herein.

11.2 Termination. This Agreement may be terminated for convenience at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or for cause if any party:

- (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or
- (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.

11.3 In the event of termination, Designer shall be compensated for the Services performed through the date of termination in the amount of (a) any advance payment, (b) a prorated portion of the fees due, or (c) hourly fees for work performed by Designer and/or Designer Agents as of the date of termination, whichever is greater; and Client shall pay any outstanding Additional Costs, Taxes, Expenses, Charges, and costs of Changes incurred through the date of termination. In the event of termination for convenience by Client, Client shall pay in addition to the above an early termination fee equal to 25% of the total Project fee, Schedule A shall not be effective, and Client shall not have rights to use the Deliverables except upon written consent from Designer provided after such termination.

11.4 In the event of termination for convenience by Designer or for cause by Client, and upon full payment of compensation as provided herein, Designer grants to Client such right and title as provided for in Schedule A of this Agreement with respect to those Deliverables provided to, and accepted by Client as of the date of termination.

11.5 Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Services, shall survive.

11.6 Work Stoppage Option. If Designer has grounds to terminate this Agreement for breach under Section 11.2(b), Designer may elect to suspend work until Client cures the breach and agrees to amend the Proposal to adjust fees, including Suspension Fees, and schedules as reasonably required by Designer.

12. General

12.1 Modification/Waiver. This Agreement may be modified by the parties only in writing signed by both parties, except that Designer's invoices may include, and Client shall pay, Additional Costs, Expenses, Charges, and costs of Changes that Client authorizes by email or a project management platform utilized for the Project. Failure by either party to enforce any right or seek to remedy any breach under this Agreement shall not be construed as a waiver of such rights nor shall a waiver by either party of default in one or more instances be construed as

constituting a continuing waiver or as a waiver of any other breach.

12.2 Notices. All notices to be given hereunder shall be transmitted in writing via a project management platform utilized for the Project, e-mail, or tracked mail, return receipt requested, to the addresses identified below, unless notification of change of address is given in writing. Notice shall be effective upon receipt or in the case of email, upon confirmation of receipt (by automated confirmation or reply by the recipient).

12.3 No Assignment. Neither party may assign, whether in writing or orally, or encumber its rights or obligations under this Agreement or permit the same to be transferred, assigned or encumbered by operation of law or otherwise, without the prior written consent of the other party, except that this Agreement may be transferred or sold as part of a transfer or sale of the assigning party's entire business or portion thereof relating to the Project.

12.4 Force Majeure. Designer shall not be deemed in breach of this Agreement if Designer is unable to complete the Services or any portion thereof by reason of fire, earthquake, flood, hurricane or other severe weather, labour dispute, act of war, terrorism, riot or other severe civil disturbance, death, illness or incapacity of Designer or any local, national or international law, governmental order or regulation or any other event beyond Designer's control (collectively, "Force Majeure Event"). Upon occurrence of any Force Majeure Event, Designer shall give notice to Client of its inability to perform or of delay in completing the

Services and shall propose revisions to the schedule for completion of the Services.

12.5 Governing Law and Dispute Resolution. The formation, construction, performance and enforcement of this Agreement shall be in accordance with the laws of the United Kingdom and the courts of England without regard to its conflict of law provisions or the conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this Agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, either party may commence mediation and/or binding arbitration a forum mutually agreed to by the parties. Designer in any dispute resolved by binding arbitration or litigation shall be entitled to recover its legal fees and costs from Client. Client acknowledges that Designer will have no adequate remedy at law in the event Client uses the Deliverables in any way not permitted hereunder, and hereby agrees that Designer shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein.

12.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision.

12.7 Interpretation. Section headings are solely for convenience and reference only and shall not effect the scope, meaning, intent or interpretation of the provisions of this Agreement nor otherwise be given any legal effect. Any design terminology shall be defined according to standard design industry usage, and any dispute as to the meaning or scope of design terminology shall be determined by Designer in good faith. Any other ambiguities shall be resolved with the most reasonable and legally valid construction, without regard to authorship of such provisions.

12.8 Integration. This Agreement comprises the entire understanding of the parties hereto on the subject matter herein contained, and supersedes and merges all prior and contemporaneous agreements, understandings and discussions between the parties relating to the subject matter of this Agreement. In the event of a conflict between the Proposal and any other Agreement documents, the terms of the Proposal shall control. This Agreement comprises this Basic Terms and Conditions document, the Proposal, and Schedule A

Schedule A Intellectual Property

IP . Rights in the Final Deliverables

IP 1.1 Final Works. Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer hereby grants to Client the exclusive, perpetual and worldwide right and license to use, reproduce and display the Final Works solely in connection with the Project as defined in the Proposal. Any additional uses will require separate pricing. All other rights, including Copyrights, are reserved by Designer. The

rights granted to Client include the rights to adapt, modify and create derivative works based on the Final Works solely in connection with the Project and usage rights set forth herein.

IP 1.2 Trademarks. Upon completion of the Services, and expressly conditioned upon full payment of all fees and costs due, Designer assigns to Client all of Designer's rights, including trademark and Copyright, in and to Trademarks created by Designer. Designer shall cooperate with Client and shall execute any additional documents reasonably requested by Client to evidence such assignment. Client shall have sole responsibility for ensuring that Trademarks do not infringe the rights of third parties, and Client shall indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party alleging trademark infringement, or arising out of Client's failure to obtain trademark clearance or permissions, for use of Trademarks.

IP 1.3 Client Content. Client Content, including pre-existing Trademarks, shall remain the sole property of Client or its respective suppliers, and Client or its suppliers shall be the sole owner of all trademark, trade secrets, patents, Copyrights, and other rights in connection therewith. Client hereby grants to Designer a nonexclusive, nontransferable license to use, reproduce, modify, display and publish the Client Content solely in connection with Designer's performance of the Services and promotional uses of the Deliverables as authorized in this Agreement.

IP 1.4 Third Party Materials. Intellectual property rights in Third Party Materials

shall be owned by the respective third parties. Designer shall inform Client of all Third Party Materials to be procured by Designer that Client may need to license at Client's own expense, and unless otherwise arranged by Client, Designer shall obtain a license for Client to use the Third Party Materials consistent with the usage rights granted herein. Client shall indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Works at Client's request.

IP 2. Rights Reserved to Designer

IP 2.1 Preliminary Works/Working Files. Designer retains all proprietary rights, including property ownership, intellectual property rights and Copyrights, in and to all Preliminary Works and Working Files, and Client shall return to Designer all Preliminary Works and Working Files in Client's possession within thirty (30) days of completion of the Services.

IP 2.2 Original Artwork. Designer retains property ownership in any physically tangible original artwork comprising Final Works, including all rights to display or sell such artwork. Client shall return all original artwork to Designer within thirty (30) days of completion of the Services.

IP 2.3 Designer Tools. Designer Tools and all intellectual property rights therein, including Copyrights, shall be owned solely by Designer. Designer hereby grants to Client a nonexclusive, nontransferable (other than the right to sublicense such

uses to Client's publisher, Web hosting or Internet service providers), perpetual, worldwide license to use the Designer Tools solely with the Final Deliverables for the Project. Client may not directly or indirectly, in any form or manner, decompile, reverse engineer, or otherwise disassemble or modify any Designer Tools comprising software or technology.

Supplement 1:

P . Samples

Designer may retain any number of samples of each printed or published form of the Final Deliverables, for use in Designer's portfolio and other self-promotional uses. Such samples shall be representative of the highest quality of the work produced.

P 2. Finished Work

The printed work, and the arrangement or brokering of the print services by Designer, shall be deemed in compliance with this Agreement if the final printed product is within the acceptable variations as to kind, quantity, and price in accordance with current or standard trade practices identified by the supplier of the print and print-related services. Whenever commercially reasonable and if available, Designer shall provide copies of the current or standard trade practices to Client. Notwithstanding, Designer shall have no responsibility or obligation to negotiate changes or amendments to the current or standard trade practices.

P3 . Photographs of the Project

Designer shall have the right to document, photograph or otherwise record all completed designs or installations of the Project, and to reproduce, publish and

display such documentation, photographs or records for Designer's promotional purposes in accordance with Section 6 of the Basic Terms and Conditions of this Agreement.