

FRANCIS BALSOM ASSOCIATES LIMITED - TERMS AND CONDITIONS FOR SUPPLY OF SERVICES

The Client has agreed to purchase and the Supplier has agreed to supply the Specified Services (as hereinafter defined) subject to the terms and conditions of this Contract.

1. In these Conditions:

'Conditions'	means the terms and conditions set out herein.
'Contract'	means the contract for the provision of the Specified Service formed by the Estimate Form, the Conditions and any Schedules attached.
'Documents'	includes in addition to documents in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disk, tape or other device embodying any other data.
'Input Material'	means any Documents or other materials and any data or other information provided by the Client relating to the Specified Service.
'Output Material'	means any Documents or other materials and any data or information provided or created by the Supplier relating to the Specified Service.
'Product'	means the product produced by the Supplier in accordance with the Specified Service.
'Specified Service'	means the services to be provided by the Supplier for the Client as detailed in the Estimate Form.
'Supplier'	means Francis Balsom Associates Limited, a member of the FBA Group, trading as "FBA".
'Estimate Form'	means the estimate and Specified Service as found on the reverse of these terms and conditions.

2. BASIS OF SERVICE

2.1 The Supplier shall provide the Specified Services to the Client subject to these Conditions to the exclusion of any other terms and conditions. Any changes or additions to these Conditions must be agreed in writing by the Supplier and the Client.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Client's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 Any estimate is given on the basis that no Contract will come into existence until the Supplier despatches an acknowledgement of order to the Client. Any estimate is valid for a period of 30 days only from its date, provided that the Supplier has not previously withdrawn it.

3. SUPPLY OF THE SPECIFIED SERVICES

3.1 The Client shall at his own expense supply the Supplier with all the necessary Input Material with sufficient time to enable the Supplier to provide the Specified Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material and shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to or the order of the Client.

3.2 The Specified Services shall be provided in accordance with the description contained in the Estimate Form or such other document referred to in the Estimate Form and attached to these Conditions. The Supplier shall use his reasonable endeavours to adhere to any dates provided as applicable.

3.3 The Supplier undertakes to submit 2 sets of proofs of the Product to the Client and the Client undertakes to read, check, correct and return the Supplier one set of the proofs by the date stipulated by the Supplier failing which the Supplier shall be entitled to regard them as having been passed.

3.4 The costs of alterations made by the Client to proofs or finished designs after final sign-off shall be borne by the Client.

3.5 The Supplier may at any time without notifying the Client make any changes to the Specified Services which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Specified Services.

4. PAYMENT TERMS

4.1 Subject to any special terms agreed, the Client shall pay the price quoted on the Estimate Form for the provision of the Specified Services. A price quoted includes all reasonable UK

telephone calls, facsimile, black and white photocopying and postal costs and any Additional Costs and Expenses which are agreed between the Supplier and the Client.

4.2 "Additional Costs" includes, but is not limited to, high resolution scans of photographs as supplied by the Client, picture hire and special photography; delivery, ISDN and special postage charges, translation and copywriting and transfer of copyright. "Expenses" includes, but is not limited to, travel costs of 42p per mile for meetings falling outside monthly meetings, entrance fees, press monitoring, conference fees and hotel accommodation incurred wholly on behalf of the Client and associated work.

4.3 All charges quoted to the Client for the provision of the Specified Services are exclusive of any VAT for which the Client will be additionally liable at the applicable rate from time to time.

4.4 The Supplier will invoice the Client following the end of each month in which the Specified Services are provided or at other times agreed with the Client.

4.5 The price and any Additional Costs and Expenses payable shall be paid by the Client (together with any applicable VAT and without any set-off or other deduction) within 30 days of the date of the Supplier's invoice.

4.6 If payment is not made 30 days after date of invoice without limiting any other rights and remedies available to the Supplier, the Supplier shall be entitled to:

4.6.1 cancel the Contract or suspend any further service to the Client under the Contract and in particular but without prejudice to the generality of the foregoing where the Specified Service is to be supplied by instalments the failure of the Client to pay any instalment in due time shall entitle the Supplier to treat such failure as a repudiation of the Contract in its entirety by the Client and to recover damages for such breach of the Contract.

4.6.2 charge interest on the outstanding amount at the rate of 4% above base rate from time to time of Bank of England from the due date until the outstanding amount is paid in full.

5. INTELLECTUAL PROPERTY

The property and any copyright or other intellectual property rights in any Output Materials shall, unless otherwise agreed in writing between the parties, belong to the Supplier. For the avoidance of doubt the Client shall only be entitled to use the Output Material for the purposes of utilising the Product by way of a non-exclusive licence, subject to payment in full of all sums payable under the Contract.

6. WARRANTIES AND LIABILITY

6.1 The Supplier warrants to the Client that the Specified Services will be provided using reasonable skill and care and so far as reasonably possible in accordance with the project brief set out in the Estimate Form.

6.2 The Supplier shall have no liability to the Client for any loss, damages, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Client.

6.3 The Supplier's web design department shall not be liable for any loss or damage sustained or incurred by the Client or any third party (including any loss of use of the web site or loss of or spoiling of any of the Client's data) resulting from any defect, virus or error in the web site.

6.4 Except in respect of death or personal injury caused by the Supplier's negligence or as expressly provided in these Conditions, the Supplier shall not be responsible to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Supplier, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Services or their use by the Client, and the entire liability of the Supplier under or in connection with the Contract shall not exceed the amount of the Supplier charges for the provision of the Specified Services, except as expressly provided in these Conditions.

6.5 The Supplier shall not be liable to the Client 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 Supplier's obligations in relation to the Specified Service, if the delay or failure was due to any cause beyond the Supplier's reasonable control.

6.6 The Client warrants that:

6.6.1 any Input Material and its use for the purposes of providing the Specified Service will not contain anything which is obscene, blasphemous, libellous or otherwise unlawful or infringe the copyright or other rights of any third party, and the Client shall indemnify the Supplier against any loss, damages, costs, expense or other claims arising from any such infringement;

6.6.2 statements in the Input Material purporting to be facts are true and any recipe, formula, instruction contained in it will not, if followed accurately, cause any injury, illness or damage to the user;

6.6.3 at the time of entering into contract he has no reason to believe that he shall be subject to liquidation or bankruptcy proceedings, voluntary arrangements with his creditors or has a receiver or administrator appointed and shall be able to supply trade references at the request of the Supplier;

6.6.4 the Client shall keep the Supplier fully indemnified against all losses and all action claims, proceedings, costs and damages and all legal costs or other expenses arising out of any breach of any of the above warranties or out of any claim by a third party based on any facts which if substantiated would constitute a breach.

7. FORCE MAJEURE

7.1 If either party is affected by any circumstances beyond the reasonable control of that party (including, without limitation, an act of God, any strike, lock-out or other industrial action) ("Force Majeure") it shall notify the other party of the nature and extent of the circumstances in question as soon as is practicable provided that any failure to so notify shall not prevent either party from relying on the Force Majeure in question. Notwithstanding any other provision of these Conditions neither party shall be deemed to be in breach of these Conditions or otherwise be liable to the other for any delay in performance or the non-performance of any of its obligations under these Conditions to the extent that the delay or non-performance is due to any Force Majeure and where applicable the time for performance of that obligation shall be extended accordingly.

8. TERMINATION

8.1 Without prejudice to any other rights and remedies the Supplier may have, the Supplier shall be entitled to terminate the Conditions in the following circumstances at any time by written notice if the Client fails on two consecutive occasions to pay for the Specified Services.

8.2 Either party shall be entitled to terminate this Agreement at any time (1) by giving one month's written notice; (2) by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or (3) if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

9. GENERAL

9.1 The Client acknowledges that there are no representations outside these Conditions which have induced it to enter into these Conditions and these Conditions (and any relevant Contract) shall constitute the entire understanding between the parties for the provision of the Specified Services. These Conditions supersede any prior written or oral agreement between the parties.

9.2 The Supplier reserves the right to employ sub-contractors and agents and also the right to delegate or assign any duties or obligations arising under these Conditions without the prior written consent of the Client.

9.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

9.4 No failure or delay by either party in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

9.5 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

9.6 Nothing in these Conditions shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to these Conditions and no supplemental or ancillary agreement to these Conditions shall create any such rights unless expressly so stated in any such agreement by the Parties. This does not affect any right or remedy of a third party which exists or is available apart from the Act.

9.7 Neither party nor its employees shall disclose to any third party details of the Contract without the prior written consent of the other.

9.8 Each party shall at all times use its best endeavours to keep confidential (and to procure that its employees and agents shall keep confidential) any confidential information which it may acquire in relation to the business and affairs of the other party to these Conditions and shall not use or disclose such information except with the consent of that other party or in accordance with the order of a court or competent jurisdiction.

9.9 The obligations of the parties contained in clause 9.8 shall continue without limit in point of time but shall cease to apply to any information coming into the public domain otherwise than by a breach by any party of its obligations contained in these Conditions provided that nothing in clause 9.8 shall prevent any party from disclosing such information to the extent required in or in connection with legal proceedings arising out of these Conditions.

9.10 These Conditions shall be governed and construed in accordance with the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the Courts of England and Wales.