

Terms of Business – EMEA

1. DEFINITIONS

In these terms and conditions, the following terms shall have the following meanings;

“**Tag**” shall mean Tag Europe Limited of 1-5 Poland St, Soho, London W1F 8PR

trading as:

Tag Collective Arts;
Tag Sourcing Network;

formerly trading as:

1stAveMachine;
Big Buoy;
Big Chop;
Big Kahuna
Bird Brain;
Rock Hound;
Smoke & Mirrors;
THP International or “The Hot Plate”;
World Writers; **or**

the Group entity that raises the invoice upon whose document these conditions are endorsed.

The “**Group**” means Wertheimer UK Limited and its creative production divisions, group and (direct and indirect) subsidiary companies and any other marketing or trading names in use.

The “**Client**” shall mean the person, firm, company or other body to whom such document is addressed.

(together the “**Parties**” and individually a “**Party**”)

These “**Conditions**” shall mean these conditions of business.

The “**Agreement**” means the contract to which these Conditions apply, and which incorporate these Conditions. Each order by a Client shall constitute a separate agreement.

2. ENTIRE AGREEMENT

2.1 This Agreement comprises this document and these clauses 1 to 14 and the Statement of Work and/or quotation provided by Tag to the Client.

2.2 This Agreement contains the entire agreement of the Parties and these Conditions shall govern the services referred to in any quotation, Statement of Work or invoice in the absence of a separate written agreement signed by both Parties relating to those services and shall take precedence over any other standard terms and conditions. Any oral or written representations, misrepresentations or undertakings made by one Party to the other and not contained in this Agreement or the Sections hereto shall not have any contractual effect whatsoever. Amendments to this Agreement are valid only when signed by duly authorised representatives of both Parties.

2.3 . All goods, services or facilities are offered and all Agreements are entered into subject to the following Conditions. These conditions shall be incorporated into any Agreement between Tag and the Client to the exclusion of any terms or conditions stipulated or referred to by the Client. Any dealings with Tag following receipt by the Client of notice of these Conditions shall automatically be deemed acceptance thereof notwithstanding the absence of formal acknowledgement.

3. TERM & TERMINATION

3.1 This Agreement will commence on the first day of the month in which the Client accepts the Agreement (the “**Commencement Date**”) and shall continue indefinitely until terminated by either Party in accordance with the provisions of this Agreement. Without prejudice to either Party’s rights to terminate in accordance with the provisions of this clause 3, this Agreement may be terminated by either Party on one (1) calendar month’s written notice. Each indemnity in this agreement is a continuing obligation separate and independent from any other obligation in this agreement and shall survive the termination of this Agreement.

3.2 Either Party shall be entitled to terminate this Agreement with immediate effect in the event that the other Party commits a material breach of this Agreement which is either not capable of remedy or which that Party fails to remedy within 14 days of receipt of a written notice requesting the breach be remedied.

3.3 Either Party shall be entitled to terminate this Agreement immediately by notice in writing to the other Party in the event that the other Party, being a company, goes into liquidation whether voluntary or compulsory or is the subject of a winding up, receivership or administration proceedings or if a person takes possession of all or any substantial part of its property, assets or undertaking or enters into any composition or other voluntary arrangement with its creditors, or suffers any distress or execution to be levied on all or any substantial part of its property, assets and undertaking or any other analogous event or ceases or threatens to cease carrying on business or becomes unable to pay its debts as they fall due or, being an individual, is subject to any analogous circumstances.

4. SERVICES AND CHARGES

4.1 Tag shall provide to the Client the services listed in the Quotation (“**Services**”) at prices indicated in the Quotation (“**Charges**”). Unless otherwise agreed by the Parties, Tag reserves the right at any time on the provision of reasonable notice to the Client to increase the Charges.

4.2 All prices set out in the Quotation are exclusive of VAT, GST or other applicable taxes. Tag shall invoice the Client on a monthly basis. Unless otherwise agreed by the Parties, the Client shall pay the Charges without set-off, withholding or deduction within 30 days of the date of Tag’s invoice (the “**Due Date**”). If the Client fails to pay any sum due under this Agreement by the Due Date Tag shall, without prejudice to any other right or remedy that it may have, be entitled to (i) suspend the provision of the Services or any part thereof and/or (ii) charge the Client interest at the rate of interest specified from time to time in the Late Payments of Commercial Debts (Interest) Act 1998 calculated daily from the Due Date until the date on which the obligation of the Client to pay the sum is discharged (whether before or after any judgment).

4.3 The Client shall have thirty (30) days from the date of the invoice within which to raise a bona fide dispute relating to the Charges. All such disputes shall be referred for resolution in accordance with clause 13. For the avoidance of doubt, all sums not in dispute shall be paid in accordance with clause 4.2 above.

5. ASSIGNMENT & SUB-CONTRACTING

5.1 Tag shall be entitled to sub-contract any of its obligations under this Agreement to any third-party subcontractor or to any other member of its Group, provided that Tag shall remain liable to the Client for the performance of any sub-contractor.

5.2 Any sub-contractor of Tag shall be entitled to rely on and enforce any of the provisions of this Agreement as if it were a party hereto in the place of Tag.

5.3 Tag may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of Tag.

6. INTELLECTUAL PROPERTY

6.1 The Client hereby indemnifies and holds Tag harmless from and against all losses, costs, awards, liabilities and expenses which Tag may incur or suffer in the proper course of providing the Services (or any other services outside of the scope of the Services) arising from any libellous actions, any infringement of any intellectual property owned by any third party (including copyright) and/or any breach or non-compliance with any legal, statutory or regulatory requirements arising from Tag's use of information, materials, data or other intellectual property provided by or on behalf of the Client ("**Original Materials**").

6.2 All Intellectual Property created or developed by Tag at the Client's specific written request and cost (whether independently or jointly with the Client) in the course of the supply of the Services and which is created or developed exclusively for the Client in connection with the Services shall vest in the Client upon payment therefor, with effect from delivery thereof. Subject to such payment, Tag hereby assigns to the Client, by way of present assignment of future rights, all of the foregoing intellectual property with effect from the date of its delivery. The Client hereby grants Tag a royalty-free licence to use during the term of this Agreement such of its intellectual property as is reasonably necessary for the purposes of this Agreement and the performance of the Services. Nothing in this Agreement or the provision of the Services shall operate to transfer any intellectual property to or from either party. Nothing in this Agreement shall affect the ownership of Intellectual Property rights of Tag (a) existing prior to this Agreement, (b) generated outside the scope of the Services and/or (c) are proprietary to Tag having been generated developed and created by Tag for the benefit of Tag and not the exclusive benefit of the Client, which shall belong at all times to Tag.

7. LIABILITY & RISK

7.1 In the event that Tag supplies Goods or Services which are not to a material extent in compliance with this Agreement and such non-compliance is caused by the acts

and omissions of Tag, Tag shall supply replacement services therefor as soon as reasonably practicable of being notified of any such non-compliance at no additional cost to the Client and except as set out in this paragraph 7.2, 7.3, 7.4 and 7.5 Tag shall have no further liability in respect of any such non-compliance (whether in contract (including an indemnity) or in tort (including negligence) or otherwise

7.2 Save to the extent any liability cannot be excluded or limited by law (i) the maximum aggregate liability of Tag and any member of its group, its employees, agents and sub-contractors, whether in contract (including under an indemnity or warranty), tort (including negligence), misrepresentation (other than fraudulent misrepresentation), equity, breach of statutory duty, strict liability or otherwise at law, and all losses arising under this Agreement shall be limited to a sum equal to the amount of Charges paid to Tag by the Client under this Agreement in the preceding 12 calendar months, and (ii) Tag shall not be liable for, or in respect of, any loss of profits, business, goodwill, media time or space or for any consequential loss or damage, or any type of special or indirect loss (including loss or damage suffered by the Client as a result of an action brought by a third party) even if such loss was reasonably foreseeable.

7.3 Without prejudice to paragraph 7.2, in respect of any courier or mail services provided by Tag (or its sub-contractors) under this Agreement, the maximum aggregate liability of Tag and any member of its group, its employees, agents and sub-contractors, whether in contract (including under an indemnity or warranty), tort (including negligence), misrepresentation (other than fraudulent misrepresentation), equity, breach of statutory duty, strict liability or otherwise at law, and all losses arising under this Agreement in respect of such courier or mail services shall be limited to the amount recovered by Tag from the relevant party providing such courier or mail services (as the case may be) in respect of such liability.

7.4 Without prejudice to paragraph 7.2, Tag shall have no liability for materials and items of whatever nature as the end result of Tag's performance of the Services ("**Materials**") that fail to comply with all local laws (whether consumer, public or civil) regulations or codes in all countries in which use is intended or made of the Materials or that they fail to carry all disclaimers, warnings and public information which a reasonably competent lawyer in any relevant jurisdiction would advise.

7.5 Without prejudice to paragraph 7.2, Tag shall have no liability for any claim of Client alleging that the Materials infringes the intellectual property rights of a third party resulting from or relating to any Original Materials provided by the Client, or which have been developed by Tag pursuant to the Client's order or instructions.

7.6 Neither party shall be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any circumstances beyond the reasonable control of that party (including, without limitation, any of the following: act of god, governmental act, war, fire, flood, explosion, civil commotion, strike, lockout or other industrial action).

8. DATA PROTECTION

8.1 Each party shall comply with the provisions of The General Data Protection Regulation (GDPR) (EU) 2016/679 (if applicable) or any local data protection laws ("**DP Laws**"), (as amended or re-enacted from time to time) to the extent directly applicable

in the receipt or delivery of Services under this Agreement. If the Client provides any personal data to Tag, it will only do so in a way that complies with DP Laws and any other applicable legislation relating to the handling of such personal data and in an appropriately secure or encrypted format. In particular, the parties acknowledge and agree that the Client will only instruct Tag to process personal data on its behalf by entering into a separate data processing agreement with Tag which is compliant with the terms of DP Laws. The Client acknowledges that Tag shall not be liable for any costs, fines, damages or liabilities that may arise from any processing of personal data by Tag on behalf of the Client if the Client has failed to provide written instructions in the form of a legally compliant data processing agreement as required by this clause 8.1.

8.2 Tag may receive or collect personal data relating to the Client's employees, directors and other personnel, as part of the operation of this Agreement and as required in order to maintain its business relationships with the Client. Such personal data may be obtained by Tag directly or indirectly. The parties agree that Tag is hereby permitted, and Client hereby authorises Tag, to process such personal data for purposes related to the carrying out of the Agreement and for relevant purposes under Tag's Data Privacy Policy, such Privacy Policy to be found on Tag's website and a copy of which can be made available by Tag to Client upon request. For such purposes, Tag may transfer such personal data to any country where Tag's global organisation and its clients and vendors operate. If required by DP Laws, Tag and Client agree to sign any additional agreement or amendment that may be required to allow transferring such personal data outside its jurisdiction of origin pursuant to such DP Laws.

9. TUPE

9.1 The Parties do not intend the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") to apply to the provision of Services. In the event that TUPE does or is alleged to apply to the provision of Services, the Client shall indemnify Tag against all losses, redundancy costs (including, without limitation, contractual and statutory redundancy payments and payments in lieu of notice), liabilities, damages, compensation, claims, costs and expenses including redundancy costs, fines, penalties, legal and other professional fees and expenses ("**Losses**") which Tag may suffer or incur on account of or arising from any claim or allegation by any employee representative or any person who is or was employed or engaged by the Client or any other person in respect of any fact or matter (including without limitation all Losses which Tag may suffer or incur arising from the employment and/or termination of employment of any person whose contract of employment transfers or is alleged to transfer to Tag under TUPE).

10. THIRD PARTY RIGHTS

10.1 Without prejudice to sub-clause 5.1, no term of this Agreement shall be enforceable by any third party being any person other than Tag or the Client (and their permitted successors and assignees) whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11. NOTICES

11.1 All notices sent under this Agreement shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address in England as the recipient may designate and shall be delivered personally or sent by pre-paid first class post. A notice is deemed to have been received if delivered personally, at the time of delivery, or in the case of pre-paid first class post, 72 hours after posting.

12. CONFIDENTIALITY AND ANNOUNCEMENTS

12.1 Each Party undertakes that for the term of this Agreement and for a period of two years after the termination of this Agreement, it shall not and shall use all reasonable endeavours to procure that its officers, employees, sub-contractors, representatives and agents shall not disclose to any person or use any information (including but not limited to tracking data and any pricing information) supplied by either Party to the other relating to this Agreement and the Services to be provided hereunder and/or the negotiations relating to this Agreement and/or relating to the business and affairs of the Parties ("**Confidential Information**"). Such Confidential Information shall not include any information already in the public domain or available to the other Party otherwise than as a result of negotiating and entering into this Agreement or providing the Services (provided that such information is not available to the other Party or in the public domain as a result of a breach by that Party of any other obligation of confidentiality) Confidential Information other than for the purpose of performance of its obligations under this Agreement.

12.2 The Parties hereby agree that clause 12.1 shall not prevent:

12.2.1 disclosure of any Confidential Information as required by law or any regulatory authority provided that the disclosing party shall, so far as practicable, first consult with the non-disclosing Party regarding such disclosure;

12.2.2 disclosure of any Confidential Information by either Party to its professional advisors;

12.2.3 disclosure of any Confidential Information by either Party to any of its officers employees, sub-contractors, representatives or agents for the purposes of performing its obligations under this Agreement; and

12.2.4 disclosure of any Confidential Information by either Party with the prior written consent of the other Party.

12.3 Without prejudice to clauses 12.1 and 12.2 above, no announcement, communication or publicity of any kind relating to the terms of this Agreement shall be made or issued, by either Party to this Agreement without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed), provided always that the prohibition in this clause shall not prevent Tag undertaking any actions which are necessary for, or incidental to, the performance of the Services by Tag.

13. DISPUTE RESOLUTION

13.1 In the event of a dispute arising under this Agreement, the Parties shall use their best commercial efforts to negotiate and settle amicably such dispute. The Parties agree in the first instance to refer any dispute to their respective account managers.

Should the account managers fail to reach resolution within 10 working days of referral of the dispute, then the dispute shall be referred to the immediate line manager of the respective account managers for resolution. Should the immediate line managers be unsuccessful in resolving the dispute within 10 working days of the dispute being referred to them for resolution, then the dispute shall be referred to the appropriate senior managers of the Parties.

13.2 Provided the procedure set out in clause 13.1 above has been exhausted or frustrated, nothing in this clause shall prevent the Parties from being entitled to commence or continue court proceedings at any time thereafter.

13.3 Neither Party shall be obliged to follow the procedures set out in sub-clauses 13.1 and 13.2 above where that Party intends to apply for injunctive relief against the other, provided that there is no delay in the prosecution of that application.

14. GOVERNING LAW

14.1 This Agreement and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the English courts.