

terms and conditions

1. APPLICABILITY OF THESE GENERAL CONDITIONS

1.1 Except as set out below, or as otherwise agreed in writing, these General Conditions, (also referred to as "this contract"), set out the terms and conditions on which 021 CREATIVE LIMITED will provide Services to the Client.

1.2 These General Conditions together with any other document agreed by 021 CREATIVE LIMITED and the Client form a part of each contract between the parties, for the supply of Services by 021 CREATIVE LIMITED to the Client. Unless otherwise agreed in writing by 021 CREATIVE LIMITED Ltd, no terms and conditions endorsed upon, delivered with or contained in the Client's acceptance or acknowledgement of this Contract, purchase order(s), specifications, or similar documents will amend, or vary the provisions of this Contract and the Client waives any right which it may have to rely on such terms and conditions.

2. DEFINITIONS

2.1 In these General Conditions:

"Agreed" means agreed in writing and signed by an authorised representative of 021 CREATIVE LIMITED.

"Services" means any Services provided by 021 CREATIVE LIMITED to the Client as set forth in the Scope of Work(s), see project proposal.

3. VARIATIONS

3.1 No variation or modification to these Service Conditions shall be valid unless in writing and duly signed by both parties.

4. RISK & TITLE

4.1 Where, at the request of a Client, 021 CREATIVE LIMITED procures the purchase of any materials for the client, this shall be entirely at the risk of the Client and 021 CREATIVE LIMITED gives no warranty in relation to any such materials.

5. ORDERING AND ACCEPTANCE

5.1 The Client may, from time to time, issue purchase orders for Services and 021 CREATIVE LIMITED shall promptly acknowledge all such purchase orders or advise the Client of any changes or corrections that may be required to the purchase orders.

5.2 No obligation, including a purchase order, shall be binding on 021 CREATIVE LIMITED unless and until the Purchase Order is accepted by 021 CREATIVE LIMITED in writing or, if earlier, Services are provided to the Client.

5.3 For the avoidance of doubt, if at any time, 021 CREATIVE LIMITED elects to continue to provide Services to the Client despite the expiry of a valid purchase order for the Services, the Services shall be performed under this Contract.

6. PRICE & PAYMENT

6.1 The prices, price validity for Services, and the terms of payment are as set out in the project proposal. Prices quoted for Services remain valid for thirty (30) days unless otherwise specified.

6.2 Unless otherwise agreed, the Client shall be charged for Services at 021 CREATIVE LIMITED's standard list prices. Details of 021 CREATIVE LIMITED's current Service prices and charges are available upon request. Any travel, subsistence or sundry expenses incurred as a direct result of performance of the contract shall be reimbursed by the Client as agreed or at least at cost plus 5%.

6.3 Unless otherwise specified in the Contract, all prices are expressed in and shall be paid in pounds sterling.

6.4 Full payment must be made to 021 CREATIVE LIMITED within thirty (30) days of the date of invoice, unless otherwise agreed in writing.

6.5 021 CREATIVE LIMITED shall be notified immediately, and no later than fourteen (14) days of any error on an invoice.

6.6 If any payment is overdue 021 CREATIVE LIMITED shall be entitled, without prejudice to any other right or remedy, to suspend all further performance of Services for the Client without notice and/or to charge interest on any amount overdue at the applicable statutory default interest rate or if none at the rate of ten percent (10%) per annum compounding daily.

6.7 If, despite any default by the Client, 021 CREATIVE LIMITED elects to continue to provide Services, 021 CREATIVE LIMITED's action in so doing shall not constitute 021 CREATIVE LIMITED's waiver of any default by Client or in any way prejudice 021 CREATIVE LIMITED's legal remedies for such default.

6.8 If, at the request of the Client, 021 CREATIVE LIMITED provides materials in conjunction with the provision of the Services, and this Contract is terminated under condition 12, or the Client does not provide a current purchase order, 021 CREATIVE LIMITED shall invoice the Client for the value of the said materials and the Client agrees to pay such invoice within 14 days from date of invoice.

7. TAXES

7.1 Prices quoted are exclusive of all applicable taxes, including but not limited to, any value added tax applicable to any Services provided. Such taxes shall be invoiced in addition to the price, if applicable.

7.2 All Taxes shall be paid by the Client unless the Client provides 021 CREATIVE LIMITED with an exemption certificate acceptable to the relevant taxing authority.

8. WARRANTY

8.1 021 CREATIVE LIMITED warrants that the Services shall be performed in a diligent manner using reasonable skill and care.

8.2 In the event of breach of clause 8.1 021 CREATIVE LIMITED, at its option, shall at no cost to the Client, either re-perform the Services or undertake to rectify the situation to the client's satisfaction provided that: (i) the complaint was not caused, or contributed to, by the Client's act or omission, breach of contract or negligence, (ii) the claim is first notified promptly in writing to 021 CREATIVE LIMITED and (iii) the Services and/or materials provided in the Services have not been modified by anyone other than 021 CREATIVE LIMITED or at 021 CREATIVE LIMITED's direction, (iv) the defect does not arise from the Client's specification or instructions; (v) failure to observe 021 CREATIVE LIMITED's recommended plan of actions and activities; and (vi) the Client has paid the purchase price for the Service and any materials in full.

8.3 Failing satisfactory resolution of any Client warranty claims, 021 CREATIVE LIMITED may, at its sole discretion, satisfy 021 CREATIVE LIMITED's liability under Condition 8.2 above by either, at 021 CREATIVE LIMITED's option, reducing the price for the Services; or providing a credit against future Service fees.

8.4 Except as expressly warranted in condition 8.1, the Services are supplied without any other representations, warranties or conditions of any kind, including implied representations, warranties and conditions of merchantability, fitness for a particular purpose, title or non-infringement of third party rights. Except for the limited remedies provided above, the Client assumes the entire risk as to the results and performance of the Services. Nothing stated in these Service Conditions will imply that the operation of any Service will be uninterrupted or error free or that errors will be corrected. Other written or oral statements by 021 CREATIVE LIMITED, its representatives, or others do not constitute warranties of 021 CREATIVE LIMITED.

9. LIABILITY AND INDEMNIFICATION

9.1 Except as set out in Conditions 8.2 above and Condition 9.2 below, neither party shall have any liability (whether in contract, tort, misrepresentation or otherwise) for any loss or damage including (without limitation) loss of, or damage to, revenue, profits, savings, use, contracts, goodwill or business and any consequential or indirect loss or damage. Nothing in this Contract shall however be deemed to limit or exclude either party's liability for fraud or fraudulent misrepresentation.

9.2 021 CREATIVE LIMITED accepts:

Liability for death or personal injury to the extent that it results from 021 CREATIVE LIMITED's negligence and to the extent required by applicable law; and Liability for physical damage to property to the extent that it results from breach of contract or 021 CREATIVE LIMITED's negligence in connection with the performance of this contract, subject to an overall limit of the lesser of the value of the purchase order in force or the annual fees received by 021 CREATIVE LIMITED under the Contract.

9.3 The Client will indemnify and hold 021 CREATIVE LIMITED harmless against any loss, claim or damage suffered by 021 CREATIVE LIMITED, its employees, agents or subcontractors:

- (a) Caused by third-party claims which exceed the limit of 021 CREATIVE LIMITED's liability as set out in these service conditions except to the extent caused by 021 CREATIVE LIMITED's own negligence;
- (b) Resulting from delays to the provision of the Services which are caused by the Client or any third party for which the Client is responsible;
- (c) Caused by the Client supplying the Service to any person who is not a party to this contract; Suffered on the Client's site, except to the extent caused by 021 CREATIVE LIMITED's own negligence;
- (e) Resulting from the Client's breach of this contract or negligence.

9.4 021 CREATIVE LIMITED will use its reasonable efforts to perform the Services within any time requested in a purchase order and in any event within a reasonable period, but in no event shall 021 CREATIVE LIMITED guarantee that the Services will be performed according to such time or be liable for any damages due to delays.

9.5 The Client and 021 CREATIVE LIMITED both recognise that it is open to either party to consider insuring against the risks apportioned in this Condition 9.

10. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

10.1 021 CREATIVE LIMITED shall retain all right, title and interest in and to, and possession of, any knowhow, technical information, specifications or documents, ideas, concepts, methods, processes, techniques, systems and inventions developed or created by or on behalf of 021 CREATIVE LIMITED relating to the Service supplied by 021 CREATIVE LIMITED under any Contract. All such information shall be kept confidential by the Client and shall not be disclosed to any third party unless and until the same is or becomes public knowledge nor shall any such information be used by the Client for any purpose other than in connection with the receipt of Services without 021 CREATIVE LIMITED's prior written consent.

10.2 021 CREATIVE LIMITED owns and shall own any patent, copyright, trade secret, design right or other intellectual property right relating to or arising from the provision of the Services and the Client shall acquire no rights in or over such intellectual property rights except as expressly set out herein. 021 CREATIVE LIMITED's trademarks and names and those of its associated companies shall not be used otherwise than as applied by 021 CREATIVE LIMITED to Services.

10.3 Any know how, information or documents supplied at any time by one party to the other shall be treated as confidential by the receiving party and shall not be disclosed to any third party or used for any purpose other than for the purpose of this Contract without the prior written consent of the disclosing party, unless and until the same is public knowledge other than through the default of the receiving party or comes into the possession of the receiving party under bona fide circumstances from a third party.

11. FORCE MAJEURE

11.1 Neither the Client nor 021 CREATIVE LIMITED shall be liable for failures in performance, including delay or non-performance, resulting from acts or events beyond its reasonable control.

11.2 Such acts or events shall include, but shall not be limited to, acts of God, civil or military authority, civil disturbance, fire, strikes, lockouts or slowdowns, work conditions, or other events beyond the reasonable control of the non-performing party.

11.3 021 CREATIVE LIMITED shall promptly inform the other of any event of force majeure, its expected duration and cessation respectively.

12. TERMINATION

12.1 If the Client commits any act of bankruptcy or, being a company, has a receiver appointed or an administration order made against it or goes into liquidation or if a similar event occurs under applicable insolvency laws, (except for the purpose of reconstruction or amalgamation), then all sums due to 021 CREATIVE LIMITED under this Contract shall immediately become due and payable and 021 CREATIVE LIMITED may, notwithstanding any previous waiver, terminate this Contract forthwith by written notice, or suspend performance of all or any of its obligations, and at any time during such suspension terminate this Contract or any part.

12.2 021 CREATIVE LIMITED may terminate this Contract on seven (7) days' prior written notice to the Client in the event of a failure by the Client to comply with any material provision of this Contract.

12.3 In the event of any termination of this Contract, the Client will pay for all materials ordered as well as for Services performed and expenses incurred by 021 CREATIVE LIMITED as of the date of termination.

13. GENERAL

13.1 The Client may neither assign nor transfer its rights under this Contract, by operation of law or otherwise, without the prior written consent of 021 CREATIVE LIMITED. Any company affiliated to 021 CREATIVE LIMITED may participate in 021 CREATIVE LIMITED's performance under these Service Conditions. 021 CREATIVE LIMITED may sub-contract its obligations under this Contract provided that it remains liable towards the Client for the performance of such sub-contractors.

13.2 Except as expressly provided, no term or provision of these general conditions shall be enforceable by a third party, (being any person other than the parties and their permitted successors and assignees).

13.3 If any term or provision of this Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of this Contract shall remain in full force and effect to the fullest extent permitted by applicable law.

13.4 This document, together with any other documents agreed between 021 CREATIVE LIMITED and the Client constitute the entire agreement between 021 CREATIVE LIMITED and the Client relating to the provision of the Services. This Contract shall inure to the benefit of and shall be binding upon 021 CREATIVE LIMITED and the Client and their respective successors and permitted assigns, including any entity with which either party may merge or consolidate.

13.5 Nothing contained in these general conditions shall be deemed to require 021 CREATIVE LIMITED to take any action that would constitute, directly or indirectly, a violation of any laws of any applicable jurisdiction, and 021 CREATIVE LIMITED's failure to take any such action shall not be deemed a breach hereunder.

13.6 Any waiver of this Contract must be expressly agreed in writing by both parties. A failure to enforce a right or remedy in this Contract does not constitute a waiver of that right or remedy.

13.7 The Client acknowledges that 021 CREATIVE LIMITED has trained personnel who perform Services and has made an investment in such personnel. Therefore, at no time during the term of the Contract, will the Client directly or indirectly either offer employment to or hire any personnel who perform Services on behalf of 021 CREATIVE LIMITED without 021 CREATIVE LIMITED's express prior written consent. In the event that the Client is in breach of this provision, 021 CREATIVE LIMITED shall have the right to invoice the Client, and the Client agrees to pay, a sum equal to 12 months salary in respect of the hired individual.

13.8 In performing the Services under this Contract, 021 CREATIVE LIMITED shall be deemed to be an independent contractor and its personnel and representatives shall not act as nor be Client agents or employees. 021 CREATIVE LIMITED shall have complete charge and responsibility for personnel employed by 021 CREATIVE LIMITED.

13.9 This Contract shall be governed by English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.