



WHISTLE & TAYLOR  
Creative Agency  
LIMITED

WHISTLE & TAYLOR CREATIVE AGENCY LIMITED

# Terms of Business

## IMPORTANT

### Please read this document

Set out below are the Terms of Business for Whistle & Taylor Creative Agency Limited Creative Agency Limited they contain certain matters effecting rights and liabilities and you are advised to read them.

ALL BUSINESS IS CONDUCTED AND ORDERS ARE ACCEPTED SUBJECT TO THESE TERMS OF BUSINESS BEING ACCEPTED.

## Definition

- **THE AGENCY** is Whistle & Taylor Creative Agency Limited.
- **THE CLIENT** is the person(s) to whom this document is addressed and/or who accepts any offer contained herein.
- **THE CONTRACT** means any quotation, verbal agreement or signed contract or estimate of the Agency any order accepted by the Client and these Terms
- **CLIENT PROPERTY** means the Client's original artwork samples software files or other materials supplied to the Agency
- **INTELLECTUAL PROPERTY RIGHTS** means all patents trade and service marks registered and unregistered designs copyright know-how confidential information trade or business names, applications for the foregoing and any other similar protected rights
- **PRODUCTS AND SERVICES** means the products and or services supplied under the Contract
- **THIRD PARTY CREATIVE WORKS** means photography illustrations or other contracted third party creative

## Terms

The Agency is only prepared to do work on these Conditions and they shall apply in all cases. No one has authority to alter, vary or amend them verbally. The Director of the Agency can alter, vary or add to them in writing and such document, to be of any effect, must be signed by the Director of the Agency. These Terms shall apply to all orders placed by the Client with the Agency and shall supersede any previously published terms and conditions of business and shall override any terms and conditions stipulated, incorporated or referred to by the Client in its order or negotiations (unless otherwise expressly agreed in writing by a Director of the Agency).

## Proofs

- (a) Proofs of work may be submitted for Client's approval and the Agency shall incur no liability for any errors not corrected by the Client in proofs so submitted. If, due to the time-scale necessitated by the job, the Client is unable or unavailable to check proofs, then the Agency cannot be held responsible for any errors and omissions.
- (b) The Client is ultimately responsible for checking proofs for any errors or omissions in design work however produced. Visual representation or design work will be provided to the best of our ability. However accuracy in colour representation and paper stocks, texture and other physical characteristics are governed by suppliers and by the final production process. Therefore all proofs and visuals supplied to the Client are

representative only and are not to be taken as the finished item. The Agency will not be responsible for the cost of rectifying, or the consequences of any errors other than those notified by the Client to the Agency in writing, prior to such authority to proceed.

## Delivery and Payment

- (a) Delivery of work shall be accepted when tendered and thereupon or, if earlier, on notification that the work has been completed, an invoice shall be raised and payment shall become due within 30 days. In certain circumstances, where the Agency so desires, payment for work due to be carried out will be on a Pro Forma Basis. This will be made clear on the relevant estimate relating to the relevant work.
- (b) Unless otherwise specified the price quoted is for delivery of the work to the Client's address as set out in the estimate. A charge may be made to cover any extra costs involved for delivery to a different address (plus VAT if payable).
- (c) Should expedited delivery be agreed extra may be charged to cover any extra costs.  
Should work be delayed by the Client at any stage of the production the Agency shall:
  - i) not be responsible for meeting the quoted deadline for delivery of work*
  - and*
  - ii) charge any additional costs involved (plus VAT if payable).*
- (d) Should work be suspended at the request of or delayed through any fault or default of the Client for a period of 30 days the Agency shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage (plus VAT if payable). If it is subsequently cancelled, a cancellation fee will be charged to the client.
- (e) After an initial meeting or conversation The Agency will produce an Estimate for the Client which will itemise all costs to be incurred. The Estimate will be as accurate as possible and will be valid for 30 days. Clients approval (written or oral) will constitute an agreement between us. Once work has been commenced the Client shall be liable to pay for any design/creative/artwork produced by the Agency as detailed on the Estimate. Designs requested and begun are paid for in full, regardless if the client decides that part of the original order is no longer needed. **THE AGENCY DOES NOT PRODUCE DESIGN OR CONCEPT WORK SPECULATIVELY UNLESS AGREED IN WRITING PRIOR TO COMMENCEMENT.**
- (f) Extensive projects and/or those requiring a significant proportion of bought out costs will be invoiced in stages and which at the discretion of the Agency may be charged in advance.
- (g) The Agency shall notify the Client of their credit limit from time to time. In the event that this limit is exceeded, a sum may be required to be paid on account representing the value of any additional Services required and may, at the Agency's option, suspend performance of the services until such further sums are paid.

(h) The Client shall be liable to pay interest on the over due amount at an annual rate of 5% above the prevailing base rate of Lloyds TSB Bank. Such interest shall accrue on a daily basis from the date on which payment becomes overdue until the date payment is received of the full overdue amount together with any accrued interest.

- (i) The Agency shall have the right, at their option, to suspend performance of the Services until the Client have paid all outstanding amounts together with all accrued interest due.
- (j) The Client shall be liable for the Agency's incidental costs of collection and recovery of amounts due.
- (k) The Agency reserves the right to add a £10 fee to each invoice in respect of administration.

## Ownership

The ownership of designs, inventions, concepts, layout, scripts, films, tapes, artwork and display materials or other material delivered by the Agency to the Client does not pass to the Client when the Client has paid all amounts due to the Agency in respect of that work, paper, or other materials. The Client shall have the right to use such designs, images and artwork royalty free for the purposes for which they were commissioned once payment has been made, but any unauthorised use shall result in further charges becoming payable by the Client to the Agency. Copyright does not pass to the client on payment of invoice. The Agency reserves the right to showcase any designs created from any project. (For promotional purposes only). All work is evaluated on a case by case basis.

Where the Agency has commissioned photography, illustration or other items originated by an outside Creator, the ownership of these items may belong to the Creator and not to the Agency. Therefore copyright will remain with the Creator.

## Limitations of use

The Agency shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any extension to the use of any music, copy, photographs, illustrations, film or video material supplied by the Agency which contains elements for which only limited use has been agreed by the Agency, the Client and the owners of suppliers of such property.

## Claims

The Client must raise any query with regard to invoices with the Agency within 14 days of receipt of the invoice, otherwise the invoice shall be deemed correct and payment will be due within 30 days of the invoice date or in accordance with any other trading terms otherwise agreed in writing. Advice of damage, delay or partial loss of goods in transit or of non delivery must be given in writing to the Agency and the carrier within three clear days of delivery (or, in the case of non-delivery, within 14 days of despatch of the goods) and any claim in respect thereof must be made in writing to the Agency and the carrier within 7 days of delivery (or in the case of non-delivery, within 42 days of despatch). All other claims must be made in writing to the Agency within 14 days of delivery.

## Illustration and Design

Custom Illustration work is owned by the Illustrator, not the client. All designs that are purchased by the client are considered as one design item and must be paid separately for. (For example: If a logo design is requested, the design process begins and multiple versions of the logo may be shown during the review process). If the client requests more than 1 version be brought final, then there may be an additional charge for that extra design. The agency will state in the initial quote the amount of design concepts that will be generated. If the client rejects these concepts and requests further concepts to be presented then additional costs will be incurred by the client. Once a design is submitted for review a client has one major amendment and several small adjustments after that. Amendments are not unlimited.

## Liability

The Agency shall not be liable for any loss to the Client arising from unavoidable delays in the production or delays in transit not caused by the Agency.

## Standing Material

Design, artwork and display materials owned by the Agency and used by it in the production shall remain its exclusive property. Such items when supplied by the Client shall remain the Client's property. If the Client supplies any artwork, illustration, images or defines any part of a project undertaken with the Agency, the Agency relies upon the Client to ensure and the Client warrants that the use of such material is legal, and does not infringe any copyright, trademark or other intellectual property right. The Client will indemnify the Agency in respect of the consequences of any such infringement.

## Client's Property

- (a) Client's property and all property supplied to the Agency by or on behalf of the Client shall, while it is in the possession of the Agency or in transit to or from the Client, be deemed as the Client's risk unless otherwise agreed in writing and the Client should insure accordingly.
- (b) The Agency shall be entitled to make a reasonable charge for the storage or any Client's property left with the Agency before receipt of the order or after notification to the Client of completion of the work.

## Printed Matter

Estimates for printing are subject to the terms and conditions of contract of printers and their suppliers in addition to the Agency's conditions of contract and are often conditional upon margins of up to 10 per cent allowed for overs and shortages which may be charged or deducted from the invoice.

## Media Buying

Where media is booked by the Agency on behalf of the Client the terms and conditions of the media supplier and, where appropriate, media broker shall apply. The Agency cannot be held responsible for deviations from specified times, placements and/or positions of advertisement made by media suppliers. Charges made by media suppliers for late booking and/or cancellations will be charged on to the Client.

## Advertising Standards

Both parties shall comply with the British Codes of Advertising and Sales Promotion, the Independent Television Commission ("ITC") Code of Advertising Standards and Practice for Television, the ITC Sponsorship Code, the Radio Authority Code and other relevant codes of advertising laid down whether on a statutory or a self-regulatory basis.

## Data Protection

Each party shall ensure that any mailing list or customer database supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998, (as replaced, modified, or re-enacted from time-to-time) and that each party shall comply with the relevant obligations of the Data Protection Act 1998.

## Overtime

Estimates are based on a reasonable time schedule, and may be revised to take into consideration "Priority Scheduling" requests requiring overtime and weekends. Knowledge of Client deadlines is essential to provide an accurate estimate.

## Illegal Matter

- (a) The Agency shall not be required to produce matter which, in their opinion, is or may be of an illegal or defamatory nature or an infringement of the proprietary or other rights of any third party.
- (b) The Agency shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any defamatory matter or any infringement of copyright, patent or of any other proprietary or personal rights contained in any material produced for the Client.
- (c) Images provided from a client for use in a design project or illustration are assumed to be the property of the client or the client has permission to use the image(s) or logo(s). The Agency will not be responsible for any copyright or trademark infringement caused by the client.

## Termination

Either party may terminate the business arrangement forthwith by notice in writing if the other party

- (a) Commits a material or persistent breach(es) of any of these Terms and in the case of a breach or breaches capable of remedy, fails to remedy such breach within 30 days of receipt of written notice giving full particulars of the breach(es) and requesting that the same be remedied.
- (b) Becomes insolvent, enters into liquidation or bankruptcy, passes a resolution for its winding up, has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditor or takes or suffers any similar action in consequence of its debt or
- (c) Ceases, or threatens to cease, to carry on business

Termination of the business arrangement for any reason shall not affect any rights, duties or responsibilities accrued to the parties prior to such termination. Upon such termination, the Client shall pay all sums due in respect of Services performed and expenditure incurred (or committed to) by the Agency up to and including the effective date of termination. If it is cancelled without due notice being given, a cancellation fee will be charged to the client.

## Survival of obligations on termination

Clauses relating to copyright and other intellectual property rights, ownership and custody of material, confidential information, warranties and indemnities, non-solicitation and notices shall survive beyond termination.

## Force Majeure

If due to war, strikes, industrial action short of a strike, import or export embargo, lockouts, accidents, fire, blockade, import or export embargo, flood, natural catastrophes or other obstacles over which the Agency has no control, the Agency fails to perform any of its obligations under this Agreement, the Agency shall not be held responsible for any loss or damage which may be incurred as a result of such

failure. Should the event of force majeure continue for longer than one month, the party adversely affected shall have the option of terminating this Agreement immediately without further liability other than such liabilities as have already accrued when the Term ends.

## Value Added Tax

All prices quoted are exclusive of VAT unless otherwise stated. VAT exemption certificates must be provided by the customer where exemptions apply.

## Notices

Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party at its address specified in the contract/order form (or such other address as is notified to the other party in writing) as follows: by hand; by registered or first class post or recorded delivery; or by facsimile transmission confirmed by registered or first class post or recorded delivery. Notices sent by registered post or recorded delivery shall be deemed to be served three (3) working days following the day of posting. Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4.00 pm on a working day, but otherwise on the next following working day. In all other cases, notices are deemed to be served on the day when they are actually received.

## Waiver

No whole or partial waiver of any breach of this Agreement shall be held to be a waiver of any other or any subsequent breach. The whole or partial failure of either Client or Agency to enforce at any time the provisions of this Agreement shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part of it or the right of either party to enforce subsequently each and every provision.

## Non-solicitation

The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organisation or otherwise and whether directly or indirectly during or for a period of 3 months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any executive of the other party who has worked on the Advertising at any time during the last 12 months of the Term.

## Severance

If any part of this Agreement is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Agreement, which will continue to be valid and enforceable to the fullest extent permitted by law. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall promptly

## Law

These conditions and all other express terms of the contract shall be governed and constructed in accordance with the laws of England.