



## **1) General**

### 1.01

All quotations are given and all business is accepted on these terms which override and exclude any other express or implied terms, stipulated or incorporated or referred to by the Client, whether in the giving of instructions or in any negotiations, and any course of dealing established between Toucan Sales Promotion Ltd ("Toucan") and the Client. All work hereafter carried out by Toucan for the Client shall be deemed subject to these terms save in so far as clearly stated otherwise in writing.

### 1.02

Subject to Clause 2 below, a contract for the provision of services specified overleaf ("the Services") shall be concluded when the Client confirms (verbally or in writing) its instructions to proceed and Toucan commences work accordingly.

### 1.03

No modification of these terms shall be effective unless made by written agreement between the parties. The signing by Toucan of any of the Client's documentation shall not imply any modification of these terms.

## **2) Quotations**

### 2.01

Quotations are valid for 30 days from their date.

### 2.02

Quotations are based upon the Client's instructions and briefs and description of the work to be completed and comprising the Services.

All revisionary work or additional work requested by the Client following commencement of the work commissioned (including outside services necessarily procured by Toucan and money necessarily expended by Toucan in order to carry out other work), which are not specifically referred to in the quotation, shall be regarded as additional and will be invoiced separately as "author's alterations" and shall be in addition to the cost given in the quotation.

### 2.03

Quotations are exclusive of the cost of deliveries and collections arranged by Toucan on behalf of the Client and such costs and the Client shall reimburse expenses to Toucan as disbursements.

## **3) Services and Additional Work**

### 3.01

All work covered by quotations given by Toucan shall be based on the Client's instructions specifying the work required. Quotations are then based on what Toucan considers to be a reasonable time schedule for completion of the work comprising the Services, during normal office hours including the cost of time by Toucan staff and the cost of services anticipated to be provided by outside sources.

If the Client requires work to be completed at short notice, or within a short period of time, or if staff of Toucan is required to work overtime in connection with the Services, additional charges will be made by Toucan. No further quotation of such additional costs will be provided unless requested by the Client before the additional work is undertaken.

## **4) The Cost**

### 4.01

Toucan reserves the right to increase its fee for the Services before completion of the work by an amount equivalent to any increase which may have arisen in the cost to Toucan of providing Services.

### 4.02

All quotations of costs are given exclusive of Value Added Tax or other levies required by law to be charged by Toucan, which shall be added to invoices submitted to the Client.

## **5) Cancellation**

Once confirmed the Client may not cancel its instructions to Toucan without the consent of Toucan, which if given shall be deemed to be on the express condition that the Client shall indemnify Toucan against all loss, damage, claims, or actions and any costs incurred or fees for time spent by Toucan in connection with that part of work comprising the Services already commenced, arising out of such cancellation unless otherwise agreed in writing.

## **6) Invoicing and Payment**

### 6.01

Toucan will invoice work at interim stages unless other terms of invoicing are specifically stated on the quotation.

### 6.02

Unless otherwise agreed the Services are provided subject to payment in cash, payable by the Client within 30 days of Toucan's invoice and for the full amount stated. Toucan shall be entitled to retain material produced by or on behalf of Toucan until Toucan shall have received payment in full of any outstanding invoice.

### 6.03

The failure of the Client to pay any outstanding invoice of Toucan in due time shall entitle Toucan to treat that failure as a repudiation of the whole contract by the Client, to forthwith cease any continuing work for the Client and to recover costs and damages.

### 6.04

Interest on all sums due shall run at the rate of 3 per cent per annum over the Base Rate of Barclays Bank plc, from time to time until payment is received after as well as before any judgement therefore.

## **7) Completion of Work**

Should Toucan be prevented from or hindered in delivering the Services or any part thereof by reason of war, riot, explosion, fire, flood, strike, lock-out, shortage of materials or labour or any cause beyond Toucan's control, the time for completion shall be extended by a period equal to that during which the cause preventing or hindering completion exists.

## **8) Copyright and Ownership**

8.01

Illustrators and photographers commissioned by Toucan, on behalf of the Client, retain ownership of full copyright in their work unless otherwise agreed and specifically stated on the quotation. Charges in quotations for illustrations and photographs are for one time use only and the original work is the property of the illustrator or photographer unless otherwise agreed and specifically stated on the quotation.

8.02

Photo Libraries from which Toucan hire visual images in material form including photographs, on behalf of the Client, retain ownership of full copyright of their work unless otherwise agreed and specifically stated on the quotation. Charges in quotations for photo library visual images in material form including photographs are for one time use only and the original work is the property of the photographer / artist unless otherwise agreed and specifically stated on the quotation.

## **9) Approvals**

The Client will be required to approve, in writing, design, copy, artwork, proofs and prototypes before final production begins. Toucan will take every reasonable precaution to ensure the accuracy of text and visual material but the responsibility to ensure accuracy lies with the Client.

## **10) Limitation of Liability**

These terms set out Toucan's entire liability in respect of the Services and Toucan's liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities expressed or implied statutory or otherwise in respect of the Services except any implied by law which by law cannot be excluded.

## **11) Toucan's Lien**

In addition to any right of lien to which it may be by law entitled Toucan shall be entitled to a general lien on all goods of the Client in Toucan's possession for all sums, whether liquidated or quantified or not, due from the Client to Toucan. Toucan shall not be liable for loss of or damage to the Client's property in Toucan's possession either as a result of the exercise by Toucan of its lien or otherwise.

## **12) Client's Property**

The Client's property and all property supplied to Toucan by or on behalf of the Client while in possession of Toucan or in transit to or from the Client will be deemed to be at the Client's risk unless otherwise agreed with the Client and the Client should insure such goods accordingly.

## **13) Warranty and Indemnity**

13.01

The Client warrants and represents to Toucan that any information or material that it supplies to Toucan will be accurate and in no way misleading and will not infringe any third party's copyright, registered design, other intellectual property rights or obligation of confidentiality.

13.02

The Client will indemnify Toucan against all actions, suits, claims, demands, losses, damages or costs or expenses Toucan may directly or indirectly suffer or incur in consequence of any information or material provided by the Client or in consequence of Toucan performing any work for the Client.

## **14) Identification**

Toucan reserves the right to identify its work carried out for the Client with a credit line reading "Toucan, London SW19" except by prior agreement.

## **15) Proper Law**

The contract for the provision of Services by Toucan shall be governed by and interpreted in accordance with English Law.

## **16) Assignment**

The Client shall not assign any benefit under the contract without that consent in writing of Toucan.

## **17) Headings**

The headings shall not affect the meaning or interpretation of these terms of business.

## **18) Notices**

Any notice given under or pursuant to the contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex, telemessage or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the face hereof, or to such other address as the party may by notice to the other have substituted thereof, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.