

# TRIGGER CREATIVE LIMITED - STANDARD TERMS AND CONDITIONS OF BUSINESS

## 1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Specification Document;
- 1.2 "Customer" means the organisation or person who purchases goods and services from the Supplier;
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Specification Document" means a statement of work, quotation or other similar document describing the goods and services to be provided by the Supplier;
- 1.5 "Supplier" means Trigger Creative Limited, company number 7170660, whose registered office is Swan House, The Park, Market Bosworth, Nuneaton, Warwickshire CV13 0LJ.

## 2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and services by the Supplier to the Customer.
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Specification Document which shall specify the goods and services to be supplied and (where possible) the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

## 3 PRICE AND PAYMENT

- 3.1 The price for the supply of goods and services are as set out in the Specification Document. The Supplier shall invoice the Customer in accordance with the terms set out within the Specification Document. All prices shall be subject to the addition of VAT unless otherwise stated.
- 3.2 Invoiced amounts shall be due and payable within 30 days of receipt of invoice. If payment has not been received as agreed, then your account may be put on hold until the outstanding balance has been received. The Supplier will not be able to process or despatch any orders received after an account has been placed on hold. The Supplier shall be entitled to charge interest and compensation in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (currently 8% above Bank of England base rate) on overdue invoices from the date when payment becomes due until the date of payment. Overdue invoices will be passed over to a Debt Collection Agency and any costs incurred in collecting payment will be charged.
- 3.3 Proforma Accounts: 100% payment is due prior to commencement of manufacture.
- 3.4 In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the goods and services are supplied. In the event a purchase order is required but not supplied by the Customer before the goods and services are supplied, the Customer shall not be entitled to any extension to the time within which an invoice is payable, which shall remain as stated in this clause.
- 3.5 The Supplier shall be entitled to require a deposit from the Customer in respect of any work to be undertaken and the Supplier shall be at liberty to apply such deposit against interim invoices or retain the same until conclusion of the project at the Supplier's sole discretion.
- 3.6 In the event that any interim invoice of the Supplier becomes overdue for payment by the Customer, the Supplier shall be entitled to withdraw all credit terms agreed with the Customer and require payment of outstanding invoice(s) in full together with payment in advance for any remaining stages of the project before work continues.
- 3.7 The Supplier shall be entitled to require payment due to any third parties (including but not limited to print suppliers, packaging manufacturers, web hosting providers, third party fabricators, photographers and image bank suppliers) before any instruction to such third parties to commence work / provision of services shall be given.

## 4 SPECIFICATION OF THE GOODS & SERVICES

All goods and services shall be required only to conform to the specification in the Specification Document. Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in catalogues or

brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

## 5 DELIVERY / COMPLETION

5.1 The date of delivery / completion of a project specified by the Supplier is an estimate only. Time for delivery / completion shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods or services.

5.2 All risk in any goods shall pass to the Customer upon delivery.

5.3 Unless agreed to the contrary, and upon an appropriate fee being agreed and paid, only title in finished design work shall pass from the Supplier to the Customer on payment. The Supplier shall retain ownership of and all intellectual in, any concepts, drafts and proposed works that do not comprise the finished deliverable design work.

5.4 The Supplier shall retain electronic copies of all completed design work for a period of 12 months after delivery. Due to the size of such files, the Supplier shall not be obliged to keep electronic copies beyond this period.

5.5 In the event the Customer requires further copies of any completed artwork, within the period outlined in clause 5.4 above, the Customer agrees to pay the Supplier for their time in retrieving such files from storage at the rate of £50.00 (plus VAT if applicable) per hour. Further, the Customer shall supply the Supplier (at the Customer's cost) suitable storage media, if so requested, in order to supply any duplicate copies of completed works.

5.6 The requirement to store electronic copies of completed works does not apply to work in progress or working drafts. Again, due to the size of such files, work in progress and concept work shall only be stored for a period of 7 days after their creation, after which the Supplier is under no obligation to store the same.

## 6 TITLE

Title in the Goods / Design work shall not pass to the Customer until the Supplier has been paid in full for the Goods / Design work. The Customer shall hold any Goods / Design work supplied but not paid for as bailee for the Supplier until payment is made in full and shall keep such Goods / Design work separate from all other goods and make them available for immediate and unimpeded collection by the Supplier in the event of non-payment / insolvency / cessation of business of the Customer.

## 7 CUSTOMER'S OBLIGATIONS

7.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

7.1.1 co-operate with the Supplier;

7.1.2 provide the Supplier with any information reasonably required by the Supplier;

7.1.3 obtain all necessary permissions and consents which may be required before the commencement of the services; and

7.1.4 comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.

7.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 7.1.

7.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods and services agreed to in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 7.1 shall be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.

7.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

7.4.1 the Supplier shall have no liability in respect of any delay to the completion of any project;

7.4.2 if applicable, the timetable for the project will be modified accordingly;

7.4.3 the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.

## 8 ALTERATIONS TO THE SPECIFICATION DOCUMENT

8.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of goods and/or services to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed goods and/or services and price and any other terms agreed between the parties.

8.2 The Customer may at any time request alterations to the Specification Document by notice in writing to the Supplier. On receipt of the request for alterations the Supplier shall, within 5 working days or such other period as may be agreed between the parties, advise the Customer by notice in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties

8.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.

8.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.

## 9 WARRANTY

9.1 The Supplier warrants that the services performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

9.2 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the goods and services to be provided by the Supplier.

## 10 INDEMNIFICATION

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

## 11 LIMITATION OF LIABILITY

11.1 Except in respect of death or personal injury due to negligence for which no limit applies, the entire liability of the Supplier to the Customer in respect of any claim whatsoever or breach of this Agreement, whether or not arising out of negligence, shall be limited to the price paid by the Customer to which the claim relates.

11.2 In no event shall the Supplier be liable to the Customer for any loss of business, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or the Supplier had been made aware of the possibility of the Customer incurring such a loss.

11.3 Nothing in these Terms and Conditions shall exclude or limit the Supplier's liability for death or personal injury resulting from the Supplier's negligence or that of its employees, agents or sub-contractors.

## 12 TERMINATION

Either party may terminate this Agreement forthwith by notice in writing to the other if:

12.1 the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 calendar days of being given written notice from the other party to do so;

12.2 the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;

12.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;

12.4 the other party ceases to carry on its business or substantially the whole of its business; or

12.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any

arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

### 13 INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights in any finished Design work produced from or arising as a result of the performance of this Agreement shall, become the absolute property of the Customer only upon payment of all charges due to the Supplier. Until this stage, all Intellectual Property Rights in any Design Work shall remain the property of the Supplier;

13.2 For the sake of clarity, all Intellectual Property Rights in any drafts that do not form part of any finished Design work remain the absolute property of the Supplier.

13.3 Photographs of completed work, taken by the Supplier or the employees of the Supplier, remain the property of Trigger Creative Ltd.

### 14 FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

### 15 INDEPENDENT CONTRACTORS

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

### 16 ASSIGNMENT

The Customer shall not be entitled to assign its rights or obligations or delegate its duties under this Agreement without the prior written consent of the Supplier.

### 17 SEVERABILITY

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

### 18 WAIVER

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

### 19 NOTICES

Any notice to be given by either party to the other may be served by email, fax, personal service or by post to the address of the other party given in the Specification Document or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall (unless the contrary is proved) be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered in the ordinary course of post.

## 20 ENTIRE AGREEMENT

This Agreement (together with any Specification Document) contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties.

## 21 NO THIRD PARTIES

Nothing in this Agreement is intended to, nor shall it confer any rights on a third party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 22 GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the law of England & Wales and the parties hereby submit to the exclusive jurisdiction of the English and Welsh Courts

## 23 ACCEPTANCE

The Customer, by virtue of its acquiescence to allow the Supplier to proceed to supply the Goods and/or Services, shall be deemed to have accepted these terms and conditions in their entirety and waives all rights to claim that the same do not form part of a properly constituted contract between the Supplier and the Customer.