



Utopia Terms and Conditions

Utopia Communications (Cheltenham) Ltd
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Terms & Conditions

These terms and conditions apply to all commissions. All services provided by Utopia Communications (Cheltenham) Limited to the Client are subject to the following terms and conditions.

1. **Terms and conditions:** The following terms and conditions apply to the Agreement and each future request for the supply of services and/or materials received by the Agency from the Client from time to time unless otherwise agreed in writing. The communication of a request by the Client to the Agency for the supply of services and/or materials shall amount to the Client's acceptance of these terms. Payment of an advance fee or payment is also an acceptance of these terms and conditions. These terms shall take precedence over any terms and conditions of the Client, whether attached to, enclosed with or referred to in any purchase order of the Client or elsewhere. They may not be varied except by written agreement between the Agency and the Client.
2. **Definitions:** In these terms and conditions the following words shall have the meanings given in this clause:
 1. 'Agency' means Utopia Communications of Cowcombe View, High Street, Chalford, Stroud, Gloucestershire GL6 8DJ, a company registered in England number 7061006;
 2. 'Agreement' means the oral or written agreement between the Client and the Agency for the supply of services;
 3. 'Brief' means the written or oral brief of the Client describing the Deliverables, their intended use and any pre-set timings for supply;
 4. 'Client' means the person, firm or company employing the services of the Agency;
 5. 'Deliverables' means the services and/or materials to be supplied by the Agency under this Agreement and as per the Brief;
 6. 'Services Cost' means the fee to be charged by the Agency for the Deliverables;
 7. 'Rights' means all copyright and related rights, design rights (whether registered or unregistered), patents, rights in trade marks (whether registered or unregistered), database rights and any other intellectual property rights (including all similar or equivalent rights or forms of protection in any part of the world) in or relating to the Deliverables.
3. **The Agency's obligations:** The Agency will use its reasonable care and skill in the production and supply to the Client of the Deliverables as per the Brief.
4. **Payment:** Invoices will be provided by the Agency upon completion of the work or at any stage as agreed by both parties for the services rendered. Invoices are normally sent via email; however, the Client may elect to receive hard copy invoices. Invoices are due upon receipt. Accounts that remain unpaid fourteen (14) days after the date of the invoice will be assessed a service charge in the amount of the higher of one and one-half percent (1.5%) or £25 per month of the total amount due.
5. **Default:** Accounts unpaid fourteen (14) days after the date of invoice will be considered in default. If the Client in default maintains any information or files on the Agency's Web space, the Agency will, at its discretion, remove all such material from its web space. The Agency is not responsible for any loss of data incurred due to the removal of the service. Removal of such material does not relieve the Client of the obligation to pay any outstanding charges assessed to the Client's account. Cheques returned for insufficient funds will be assessed a return charge of £25 and the Client's account will immediately be considered to be in default until full payment is received. Clients with accounts in default agree to pay the Agency reasonable expenses, including legal fees and costs for collection by third-party agencies, incurred by the Agency in enforcing these Terms and Conditions.
6. **Brief, Deliverables and Changes:** The Client warrants that the Brief is accurate so far as is possible. As the Services Cost and any pre-set dates for supply of the Deliverables will be agreed on the basis of the Brief, any changes to it after the conclusion of the Contract, whether resulting from alterations by the Client, delay in providing the Agency with materials, information, instructions or authorisations, supply of faulty materials to the Agency by the Client, or any other circumstances beyond the Agency's control, will be subject to extra charges for the Agency's time and work and may involve delays in supply. The Client will pay these extra charges and reimburse the Agency for any third party charges or expenses incurred by the Agency on the basis of the original Brief.

7. **Production:** Unless otherwise agreed in writing the Agency will arrange and oversee all production and post-production related to the Project. Should it be agreed that the Client arranges any production work itself, then in that regard the Agency shall not be responsible for the booking, supervision or quality control of any relevant facilities, nor will it be responsible for payment of any related charges.
8. **Approvals:** Approval by the Client of final copy, layouts, scripts, storyboards, designs and the like will be the Agency's authority to proceed with production or publication as appropriate. Where artwork or other material is sent to the Client for final approval, the Client shall check it carefully and notify the Agency of any errors or alterations. The Agency will use its reasonable endeavours to effect any changes so notified but the Agency reserves the right to charge extra if any of these alterations either go beyond the original Brief. Where notification of errors is either unreasonably delayed in this way or does not occur at all before publication, the Agency will not be liable in respect of any such errors. The Agency will also not be liable in respect of errors which may occur after the handover of artwork where the Client oversees the print and production process. The Agency cannot guarantee that any or all colours will be exactly replicated in the final version as published.
9. **Rights:** Unless negotiated and agreed in writing, the copyrights of general artwork, commissioned artwork, illustrations, website design, programming and copy belong to the Agency. If the Client supplies the Agency with material, it is the Agency's responsibility to obtain all necessary copyrights for its use in advance. In such cases the copyright belongs to the Client. The Agency reserves the right to use any artwork or printing it produces for the purposes of promoting its services unless requested otherwise in writing.

The Client's right to use any material of the Agency shall be automatically terminated if the Client either:

1. does not pay the Services Cost in full by the due date; or
2. (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or
3. (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or
4. becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
5. has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or
6. ceases, or threatens to cease, to carry on its business.

If the Client wishes to use the Deliverables in ways going beyond the parameters in the Brief, it must approach the Agency for prior written consent.

In so far as use of the Deliverables as per the Agreement involves use of third party material, the Agency will secure such licence as is necessary to allow the required use of the same.

Subject to the above and to the rights of any third party, ownership of the Rights shall remain vested in the Agency unless and until any assignment or other disposition of the Rights is agreed between the parties in writing.

For the avoidance of doubt, where the Agency makes any presentation to the Client going beyond the Brief, the Client shall have no right to make use of any material contained in such presentation unless and until a separate contract is concluded between the parties.

Use of the Deliverables as per the Brief may involve the Client in continuing liability to third parties, for example for royalties, licence fees and performance fees. The Agency will endeavour to notify the Client of these as soon as practicable during the production process.

If, during or after the period of use of the Deliverables envisaged in this Agreement, the Client wishes to use or authorise another to use any part of the Deliverables in ways outside those contemplated in this Agreement, the Client should obtain the Agency's prior written consent.

10. **Compliance:** Except where the Agency agrees to the contrary, it shall be the sole responsibility of the Client to ensure that the Deliverables comply with all local laws (whether consumer, public or civil), regulations and codes in all countries in which use is intended as stated in the Agreement. It shall also be the Client's responsibility to ensure that the Deliverables carry all disclaimers, warnings and public information which any competent lawyer of the Client in any of the relevant jurisdictions would advise.

Accordingly the Client agrees to indemnify and hold harmless the Agency and the Agency's agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) arising from any claim, demand or action alleging that the Deliverables or use of them are contrary to any law, code or regulation in any country.

11. **Publicity and examples:** Notwithstanding the licence described in clause 8 above or any other disposition of the Rights agreed between the parties, the Agency shall have a continuing right to use the Deliverables for the purposes of advertising or otherwise promoting the Agency's work.
12. **Expenses:** The Agency will, where practicable, endeavour to estimate studio costs and extras such as couriers and other external services to be used in relation to the Deliverables, but this will not always be possible. All expenses related to a production, will be invoiced by the Agency and the Client shall pay such invoices as detailed by the Agency.
Where expenses are likely to be significant, the Agency reserves the right to require the Client to pay the full amount of the expected expense in advance.
General out-of-pocket expenses incurred in supplying the Deliverables, such as courier charges, travelling and hotel expenses, will be charged by the Agency at cost and the Client shall pay the relevant invoices as detailed by the Agency.
Where extra expenses are incurred, either as a result of alterations to the original Brief or otherwise at the Client's request, the Client shall pay such expenses by way of settlement of the relevant invoices as detailed by the Agency.
13. **Delivery:** Where the Deliverables includes goods, the delivery of goods and passing of risk shall be regarded as occurring on the day of delivery to the Client. If the Client wishes to collect the goods but is then unable to do so then the Agency shall be entitled to arrange storage and/or transportation for the goods on the Client's behalf at the Client's expense. All charges for such storage, transport and any insurance shall be payable by the Client forthwith on request.
The Client shall inspect and check the goods immediately on delivery and shall give the Agency notice in writing by fax or post within 7 working days after the day of delivery as to any alleged defect together with details of the alleged defect. The Client will permit the Agency to inspect any allegedly defective goods. Failing such notice, the goods shall be deemed to be in accordance with the Agreement and the Client shall be deemed to have accepted the goods and to be liable to pay for the goods.
Where either delivery difficulties or other circumstances necessitate the Agency electronically storing any part of the Deliverables for the Client's future use, the Agency reserves the right to levy storage charges and charges for retrieval from storage, which the Client shall pay as detailed by the Agency.
14. **Trademarks and domain names:**
If any Deliverables use any trademarks, trading styles or trade names ('Marks') owned by the Client or under its control, it is agreed that the Agency shall have the right to use or allow use of any such Marks for the purpose of fulfilling the Agency's obligations under the Agreement. The Agency shall not gain any rights over such Marks by virtue of such use, but the Agency shall be entitled to use the Marks both during and after the production and supply of the Deliverables to promote and advertise its own work.
It shall be the Client's responsibility to ensure that all domain names used in connection with the Deliverables are wherever practicable properly registered and do not infringe any third party rights and that any Marks of the Client or any third party used in the Deliverables, including such Marks as are supplied by the Agency as part of the Brief, are used in a manner which neither undermines the Client's rights in its Marks nor infringes any third party rights.
15. **Rejection or cancellation:** Once the Contract is concluded as provided on these terms and conditions, any subsequent cancellation by the Client will result in the Client being liable for the Services Cost incurred to date as if the cancellation had not taken place, excluding such committed third party expenses as the Agency is able to avoid liability for within its existing contractual commitments to suppliers.
16. **Property:** Where Deliverables are supplied to the Client on computer disks or other electronic storage method, then the Agency remains the owner of these storage media and reserves the right to require immediate return of them. Should any artwork be supplied to the Client in digital form, the Client may not amend it or otherwise use it for purposes outside those contemplated by this Agreement without the Agency's express prior written permission.
17. **Liability:** Nothing in these terms and conditions shall exclude or restrict the Agency's liability for death or personal injury resulting from its negligence, liability for fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law. Subject to this:
1. the Agency's total liability to the Client in contract law or in tort or otherwise howsoever arising in relation to this Agreement is limited to the Agency's charges for the Deliverables;
 2. the Agency shall not be liable in any way in respect of any failure, delay or defect in the supply or use of the Deliverables caused by the supply or specification by the Client of unsuitable material or content or by the reproduction of the Deliverables by a third party; and
 3. the Agency will not be liable to the Client for economic loss including loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of any description howsoever caused and even if foreseeable by the Agency.
All warranties, conditions and other terms implied by statute, common law or otherwise are hereby excluded from the Agreement to the fullest extent permitted by law.

18. **Sub-contracting and assignment:** The Agency may sub-contract any or all of its rights or obligations under this Agreement and may with the Client's consent, such consent not to be unreasonably withheld or delayed, assign the benefit and burden of its rights and obligations under this Agreement to any other entity.
19. **Confidential information:** Neither party shall divulge any confidential information which is supplied to it about the other party in the course of this Agreement or any pre-Agreement discussions, other than information forming part of the public domain otherwise than through a breach of this clause or any other obligation of confidence.
20. **Termination:** Either party may by notice in writing to the other terminate this Agreement forthwith upon the happening of one or more of the following events:
 1. if the other shall fail to make any payment due under this Agreement in accordance with the invoice requirements after the due date, or to remedy any other breach within 14 days after being required to do so in writing; or
 2. if the other shall be involved in any of the situations described at clauses 8.2-8.6 above.Such termination shall be without prejudice to the parties' accrued rights and liabilities, in particular, the Agency's entitlement to payment for work done.
21. **Matters beyond the Agency's reasonable control:** The Agency is not liable for any breach of this Agreement caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving the Agency's employees), weather of exceptional severity, unavoidable hardware or software failures, or acts of local or central government or other authorities.
22. **Design Credit:** A design credit is not required for the Agency's Services. Clients reserve the right to display their own logos and designs with any data or files supplied to them by The Agency.
23. **Access Requirements.**

If any Programs are to be installed on a third-party server, The Agency must be granted temporary read/write access to the Client's storage directories, and those directories must be accessible via FTP. Depending on the specific nature of the project, other resources might also need to be configured on the server.
24. **Post-Placement Alterations.**

The Agency cannot accept responsibility for any alterations caused by a third party occurring to the Client's data and files upon completion. Such alterations include, but are not limited to additions, modifications or deletions.
25. **Entire agreement:** This Agreement is the entire agreement between the parties on the subject matter contained herein and supersedes all representations, communications and prior agreements between the parties in that regard. Each party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties, promises and terms contained or expressly referred to in this Agreement and, save as expressly set out in these terms and conditions, neither party shall have any liability in respect of any other representation, warranty or promise unless it was made fraudulently.
26. **Governing law and jurisdiction:** This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law and each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of England and Wales.