

TYPHOON CREATIVE PARTNERSHIP LIMITED / TYPHOON TERMS AND CONDITIONS

1. INTERPRETATION

1.1 In these terms and conditions:

<i>Brand Services</i>	any of the Services provided by Typhoon relating to the Client's brand including any ideas for the formation or development of the Client's Brand.
<i>Budget</i>	means the approved and agreed budget (if any) for the Project as set out in the Specification.
<i>Cancellation Fee</i>	means the greater of 50% of the Project Fee or the aggregate of: (i) the cost to the Client of all work undertaken by Typhoon up to the date of cancellation; (ii) not less than 50% of the balance of the Project Fee under the Contract
<i>CDPA</i>	means the Copyright Designs and Patents Act 1988 as the same has been modified and/or re-enacted and/or supplemented by any relevant regulations or subsequent legislation.
<i>Client</i>	means the person, business, corporation or other entity that is being supplied with services by Typhoon.
<i>Client's Brief</i>	means Typhoon's written understanding of the Client's requirements more particularly set out in the Letter of Engagement and the Specification.
<i>the Conditions</i>	means these Terms and Conditions of Typhoon Creative Partnership Limited.
<i>Consultancy Services</i>	means any type of consultancy marketing training or associated services provided by Typhoon to the Client more particularly set out in the Letter of Engagement and/or the Specification.
<i>Contract</i>	means the contract for the provision of all or any of the Services incorporating the Letter of Engagement the Specification any of the Documents and the Conditions.

<i>Development Services</i>	means any Services provided by Typhoon relating to any software development or software work set out in the Specification for any purpose.
<i>Document</i>	includes any software, codes, drawings, computer generated material, any document in writing, any map, plan, picture or other image or any other record of any information in any form.
<i>Estimates</i>	means Typhoon's standard form of written estimates for the provision of any of the Services or any part of the Services which if the Client wishes to accept the Client signs and returns to Typhoon.
<i>Fees</i>	means all of the payments due to Typhoon for the provision of the services including VAT disbursements and incidentals.
<i>Film</i>	means Film referred to in the Letter of Engagement or the Specification being the Project or part of the Project under these Conditions.
<i>Intellectual Property Rights</i>	means all creative ideas concepts and copyright and other intellectual property rights howsoever arising and in whatever media whether or not registered including (without limitation) patents trademarks service marks trade names registered designs brand names and any applications for the protection of registration of these rights and all renewals and extensions thereof throughout the world.
<i>Letter of Engagement</i>	means the Letter signed by the Client engaging Typhoon to undertake the Services in accordance with the Client's brief and the Specification.
<i>Licensed Materials</i>	means any document where the Intellectual Property Rights are owned by a third party and which can be provided to the Client as part of the Services on payment of a fee.
<i>Materials</i>	means all materials (including without limitation Licensed Materials) including all Documents, artwork, proofs, plates, photographs, transparencies and any other items of a physical nature deliverable to the Client as part of the Services.
<i>Overseas Work</i>	means work undertaken by Typhoon outside of the United Kingdom.
<i>Production Services</i>	means all services provided by Typhoon in connection with a Film more particularly set out in the Specification.

<i>the Project</i>	means all the proposed Services to be provided by Typhoon to a client more particularly set out in the Letter of Engagement and/or the Specification.
<i>Project Programme</i>	means where appropriate the programme of services to be provided by Typhoon in accordance with the Contract during the term of the Project.
<i>Services</i>	means any or all of the various services to be provided by Typhoon more particularly set out in the Letter of Engagement and the Specification.
<i>the Software</i>	means the development of certain computer software more particularly set out in the Specification and includes any operating manuals to be developed by Typhoon in accordance with the Contract and shall include any enhancements or modifications made thereto.
<i>Specification</i>	means the detailed Specification of the Project based on the Client's Brief as understood by Typhoon attached to the letter of Engagement or described or attached to an Estimate from time to time.
<i>the Website</i>	means the Website to be known under the domain name as set out in the Specification and such other additional sites and domain names as the parties shall agree upon from time to time.

- 1.2 References in the Contract to the singular include the plural and vice versa.
- 1.3 References to the masculine gender shall include references to the feminine and neutral genders.
- 1.4 The headings in these Terms and Conditions are for convenience only and shall not be used to interpret the conditions.

2. SUPPLIERS SERVICES UP TO COMPLETION OF THE PROJECT PROGRAMME

- 2.1 Until such time as the Letter of Engagement or Estimate has been signed by the Client and returned to Typhoon, Typhoon will be under no obligation to provide any of the Services under the Contract.
- 2.2 Prices quoted in Estimates or Letters of Engagement shall be valid for three months from the date of issue.
- 2.3 By accepting the terms set out in the Letter of Engagement and/or an Estimate and signing it and returning it to Typhoon, the Client confirms and acknowledges that (if appropriate) the Client's Brief and the Specification attached to the Letter of Engagement are accurate and fully describe the

Client's requirements for the Project, and that Typhoon's understanding of the Client's requirements are (where appropriate) fully set out in the Client's Brief.

- 2.4 Typhoon will use all reasonable endeavours to provide the Services in accordance with the Contract (and where appropriate within Budget).
- 2.5 Unless agreed otherwise in the Letter of Engagement Typhoon shall send the Project Programme to the Client together with where appropriate Estimates for providing any of the Services described in it.
- 2.6 If the Client wishes to proceed with any of the Services set out in the Project Programme, the Client will pay any deposits or other monies requested in advance by Typhoon and sign any Estimates or Letters of Engagement to progress the Project.
- 2.7 The Client will be deemed to have accepted the Project Programme when signing the Letter of Engagement and/or any Estimates issued by Typhoon or when monies requested by Typhoon are forwarded by the Client, but Typhoon will be under no obligation to provide any of the Services unless it receives and accepts a signed Purchase Order and any monies required to be paid by the Client.
- 2.8 The Client agrees that it will throughout the Project respond promptly to a request by Typhoon for instructions and information to enable Typhoon to provide the Services. If the Project is delayed as a result of the Client failing to respond to any request for information or give instructions for periods which in aggregate exceed six weeks Typhoon shall be entitled to serve a written notice on the Client giving the Client a further twenty working days in which to fully respond to Typhoon's request. If by the expiry of such notice the Client has failed to give Typhoon instructions or provide information as requested Typhoon shall be entitled to terminate the Contract and the entire balance of the Fees shall then become payable.

3. BRAND SERVICES AND DEVELOPMENT SERVICES

- 3.1 The Client acknowledges that in providing Brand Services to the Client that the Client and Typhoon commit themselves to an evolving strategy based on the Project Programme as advised by Typhoon to develop the Client's brand which will comprise (without limitation) ideas designs concepts information and document as well as presentations discussions and meetings with the Client.
- 3.2 On the Client paying the Fees for the Brand Services in full Typhoon grants to the Client an exclusive licence on the terms as agreed and set out in the Letter of Engagement or Estimate to use the Documents Materials and Software for all purposes in connection with the Client's brand subject to any limitations or restrictions set out in the Specification including the right to reproduce Documents and Materials for the purposes of advertising and promoting the Client's brand PROVIDED ALWAYS that Typhoon shall always be entitled to use the Documents Materials and Software developed for the Client solely for the purposes of its own publicity and marketing.

- 3.3 Typhoon shall not be involved in the creation of any website which uses trade names trade marks colours visual futures or layouts which might result in such site being confused by Internet users with the Client's Website and any other brand materials provided by Typhoon or any other site maintained by or for the benefit of the Client and whether or not using the Software and the Documents.
- 3.4 Where the Project has been cancelled prior to completion by the Client and a Cancellation Fee has been paid Typhoon grants to the Client a non-exclusive non-transferable licence to use such of the Software the Documents and Materials as have been developed (whether completed or not) in perpetuity PROVIDED ALWAYS none of the Materials shall be provided to the Client unless the Materials have been paid for in full.
- 3.5 On payment of all fees in full Typhoon shall provide the Client with all manuals Materials Documents codes and Software relating to the Brand and where the Client has cancelled the Contract and paid the Cancellation Fee in full Typhoon will provide such codes information and documents as are necessary to enable Typhoon to comply with it's obligations under clause 3.4
- 3.6 Unless a separate agreed fee is paid to Typhoon and the agreement is recorded in the Contract specifically Typhoon will not assign any Intellectual Property Rights in any of the Documents Materials and Software that it produces or creates to the Client as a result of providing Services to the Client.
- 3.7 For the avoidance of doubt the Client shall not be entitled to use any of the Materials or Licence Materials for any purposes other than for the Project and unless Typhoon has specifically agreed in writing in the Contract otherwise the Client shall not use the Materials or Licence Materials for the benefit of any third parties.

4. CONSULTANCY SERVICES

- 4.1 Where Typhoon provides Consultancy Services the Consultancy Services provided are set out in the Letter of Engagement and/or the Specification based on the fees specified.
- 4.2 In the event of the Client wishing to cancel any of the Consultancy Services not yet provided but scheduled to be provided by Typhoon and whether or not in the Project Programme Typhoon shall at its absolute discretion (exercised reasonably) charge a Cancellation Fee taking into account the amount of work undertaken and the amount of notice given to Typhoon by the Client ahead of the provision of any such scheduled services.

5. PRODUCTION SERVICES

- 5.1 Where Typhoon provide Production Services such services will be in accordance with the Specification and in accordance with any agreement (which in the case of advertisements) will be in a form based upon a standard advertising association agreement a copy of which forms part of the Specification and/or the Purchase Orders.

6. FEES AND PAYMENT

- 6.1 Typhoon's Fees shall be charged and paid by the Client in accordance with the terms set out in the Letter of Engagement the Estimate and/or Specification.
- 6.2 At any time during the Project and where it is appropriate to do so Typhoon shall be entitled to ask for a sum of monies on account of anticipated fees whether in relation to incurring costs and disbursements or whether in relation to anticipated time to be spent on Services.
- 6.3 Whilst Typhoon will try and anticipate any advance payments in the Letter of Engagement and the Specification the Client recognises that Typhoon shall be entitled to require the Client to make advance payments at any time where circumstances make it appropriate to do so.
- 6.4 Any estimates of price or time relating to the Project are given in good faith but are not binding on Typhoon unless Typhoon has agreed to work within the Budget set out in the Letter of Engagement and the Specification.
- 6.5 Unless specified otherwise in the Letter of Engagement Typhoon's invoices shall be settled within 30 days of them being submitted to the Client. If the client fails to make payment Typhoon shall be entitled to charge interest at 5% above the base rate of National Westminster Bank Plc base rate from time to time such interest to be compounded quarterly and to continue to accrue until payment is made in full.
- 6.6 The charging of interest by Typhoon to the Client shall not in any way affect Typhoon's other rights under the Contract or in law against the Client.
- 6.7 Where Typhoon are required to travel outside the area enclosed by the M25 Motorway the Client will be responsible for and if required by Typhoon make payment in advance for: -
- a. all costs of travel;
 - b. a sum representing the anticipated time that Typhoon and its staff will be away from its London office; and
 - c. where appropriate a sum to represent reasonable and proper accommodation meals and refreshments
- 6.8 In addition to any other fees the Client will be responsible for any out of pocket expenses incurred by Typhoon in providing the Services including without limitation courier fees travel fees photocopying charges and fees of any other professionals which Typhoon deems necessary to engage to assist in the Project, international telephone calls and facsimiles storage collection and delivery charges hire of specialist equipment and accommodation costs.
- 6.9 All bought in costs from third parties will be subject to a 15% handling fee.
- 6.10 All payments shall be made in pounds sterling unless specifically agreed otherwise. Any bank charges and all costs of converting other currencies to pounds sterling shall be the responsibility of the Client.

- 6.11 All charges quoted are exclusive of Value Added Tax which will be payable in addition where appropriate.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights including without limitation the copyright on all ideas designs specifications colour schemes and other intellectual property rights whether registerable or not shall belong to Typhoon and remain the property of Typhoon.
- 7.2 On payment of all of the Fees Typhoon will (unless the intellectual property rights are being assigned to the Client) give the Client an exclusive licence (subject to clause 7.4) to use the Documents Materials and Software for the purposes of the Project and for no other purpose as set out in the Specification and/or the Letter of Engagement and will at the cost of the Client sign all documents and undertake any acts which the Client reasonably requires to enable it to have the full use of all associated Intellectual Property Rights and the benefit of the Services provided.
- 7.3 The Client shall:
- a. not cause or knowingly permit anything which may damage or endanger any of the Intellectual Property Rights or assist others to do so;
 - b. notify Typhoon immediately if the Client becomes aware of any illegal or unauthorised use of the Intellectual Property Rights contained in any of the documents;
 - c. assist Typhoon (at Typhoon's cost) in taking all steps necessary to defend the Company's rights therein
- 7.4 Unless the Client specifies otherwise in writing before the completion of the Project Programme Typhoon shall be free to use the Project Programme and the drawings elsewhere for publicity or for any other reasonable purpose that Typhoon considers appropriate.
- 7.5 Unless specifically agreed otherwise in the Specification all source codes for any creative work or program contained in any digital system or format shall be retained by Typhoon. As long as the Client has paid all fees in full under the Contract to Typhoon Typhoon shall give the Client or any third party that it properly nominates or authorises in writing whatever reasonable and necessary access to the source code as the Client shall require to enable the Client to have full use of any licence granted to the Client or any Intellectual Property Rights assigned to it

8. MATERIALS AND LICENSED MATERIALS

- 8.1 Until Typhoon has been paid in full for all its Fees in connection with the Project and notwithstanding the delivery of Materials (or some of the Materials) to the Client prior to such payment the Materials shall remain the exclusive property of Typhoon and ownership shall only pass to the Client on payment of Typhoon's Fees in full subject nevertheless to any of the rights of third parties in respect of any Licensed Materials.

- 8.2 Until such time as Typhoon's fees have been paid in full the Client agrees and undertakes: -
- a. to keep any Materials in its possession fully and adequately insured;
 - b. at the request of Typhoon to promptly deliver up evidence of such insurance;
 - c. to keep all Materials in its possession properly stored in a safe place and separate from any other assets so as to be readily identifiable;
 - d. that if Typhoon require the return of any Material in the Client's possession or under the Client's control to return immediately at the Client's cost the Materials to Typhoon to such place in London as Typhoon shall reasonably require;
 - e. to be responsible for and to keep Typhoon fully and effectively indemnified in respect of any costs (including any legal costs) incurred by Typhoon where it has required the Materials to be returned and the Client has failed to return such materials
- 8.3 The remedies referred to in this clause 3 are without prejudice to Typhoon's other rights and remedies where payment has not been made or where the Client is in breach of its contract.
- 8.4 Typhoon will use all reasonable endeavours to obtain authorisation for the proper use of Licensed Materials from third parties. The costs charged by third parties for such use shall be borne entirely by the Client who shall pay all such costs to Typhoon in advance before such Licensed Materials have been ordered by Typhoon.
- 8.5 The Client shall be responsible for complying with any conditions attached to the use of the Licensed Materials by the Client under the terms of the Contract including without limitation any obligations not to reproduce or otherwise use the Licensed Material for purposes other than those for which the Licensed Material was duly authorised.
- 8.6 The Client shall keep Typhoon fully and effectively indemnified in respect of any costs penalties charges or other payments that are found to be due to any third party in respect of Licensed Materials as a result of the unlawful use of such Licensed Materials by the Client.

9. VARIATIONS IN THE PRICE AND IN THE SPECIFICATION

- 9.1 If any part of the Project Programme or Services is varied as a result of either
- a. a change in the Project Programme or Services requested by the Client;
 - b. or any unforeseen price rise;
 - c. or because Typhoon is unable to supply any of the Materials or any of the Services;
 - d. or as a result of the Client changing its requirements then any variations to the Project Programme or the Contract shall be recorded in writing between the parties including any adjustment to price or payment terms
- 9.2 Until the Client signs a revised Purchase Order setting out the changes to the Contract Typhoon shall be under no obligation to undertake any variations or changes occasioned under clause 9.1
- 9.3 Any prices quoted by any third party which change shall be passed on to the Client and shall remain the Client's responsibility.

- 9.4 The hourly rate charged by Typhoon may be changed during the course of the Project by giving not less than three months written notice of such proposed change which would take effect on the expiry of the notice.
- 9.5 Variations in the Project Programme or in the Contract or any of its terms which have either been agreed with the Client or which have been deemed to have been agreed by the Client shall be incorporated as part of the Contract between Typhoon and the Client.

10. WARRANTIES AND LIMITATIONS

- 10.1 Typhoon warrants to the Client that the Services will be provided using reasonable care and skill and as far as reasonably possible in accordance with the Project Programme. Where Typhoon provides any materials supplied by a third party in connection with the Project Typhoon gives no warranty guarantee or other assurance or term as to their quality fitness for purpose or otherwise but shall where possible assign to the Client the benefit of any warranty guarantee or indemnity given by the person supplying such materials to Typhoon.
- 10.2 Unless stated in the Contract to the contrary:
- a. Fees quoted for the Services shall include all desk research associated with completing the Project, Client communication and liaison regarding the progress of the Project, all London travel within the M25, UK telephone calls and fax transmissions, all print out associated with ideas and creative development, PDFs of all ideas and creative work, co-ordination and communication with media buying agencies printers and publishers regarding the supply of artwork;
 - b. Fees quoted for the Services shall not include transmission of print and artwork to publications of printers via ISDN Quick Cut, or any comparable or replacement system co-ordination of print production, burning of artwork to CD-ROM or DVD duplication of transparencies, high resolution scanning, copy writing of any kind, couriers, regional and international travel, translations, Value Added Tax and any other taxes.
- 10.3 Typhoon shall have no liability to the Client for any loss damage costs expenses or other claims for compensation arising from any materials information or instructions supplied by the Client which are incomplete incorrect inaccurate illegible out of sequence or in the wrong form or arising from their late arrival or non-arrival or any other fault of the Client.
- 10.4 Except in respect of death or personal injury caused by Typhoon's negligence or as expressly provided in these Conditions Typhoon shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any loss of profit or any indirect special or consequential loss damage costs expenses or other claims which arise out of or in connection with the provision of the Services or their use by the Client and the entire liability of Typhoon under or in connection with the Contract shall not in any event exceed the amount of Typhoon's Fees for the provision of the Services.

10.5 Typhoon shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of Typhoon's obligations in relation to the Services if the delay or failure was due to any cause beyond Typhoon's reasonable control.

11. TERMINATION

11.1 Typhoon may terminate the Contract at any time by giving not less than one month's written notice to the other party PROVIDED ALWAYS that on the date the notice expires Typhoon shall not be obliged to undertake any further works in connection with the Project unless specifically agreed between the parties. Typhoon shall be entitled to charge for all costs charges up until the date the notice is received including, without limitation, any fee due as a result of the Client engaging a Contractor which would otherwise have become payable to Typhoon when the Contract terminates.

11.2 The Client may terminate the Contract at any time by not less than one month's written notice to Typhoon subject to the payment of the Cancellation Fee.

11.3 Either party may (without limiting any other remedy) terminate the Contract at any time by giving written notice to the other if the other commits any breach of these Terms and (if capable of remedy) fails to remedy the breach within 20 working days after being required by written notice to do so, or if the other goes into liquidation becomes bankrupt makes a voluntary arrangement with its creditors or has a Receiver or Administrator appointed.

12. MISCELLANEOUS PROVISIONS

12.1 These Conditions (together with the Specification the Project Programme and the Letter of Engagement) constitute the entire agreement between the parties and supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms express, implied by statute or otherwise are excluded to the fullest extent permitted by law.

12.2 Where there is a conflict between these Conditions and the Letter of Engagement or an Estimate or the Documents the Letter of Engagement, Estimate or Documents will prevail as the case may be.

12.3 A notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party in the case of the Client at the Property or such other address as the Client has given and in the case of Typhoon at their principal place of business or such other address as may at the relevant time have been notified pursuant to the provision to the party giving the notice.

12.4 English law shall apply to the Contract and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.

12.5 No third party shall have any rights under or in connection with this agreement by virtue of The Contracts (Rights of Third Parties) Act 1999.

13. OVERSEAS WORK

- 13.1 Where either the Project is located outside of the United Kingdom or Typhoon or any members of its team are required to travel outside of the United Kingdom the provisions of this Clause 13 shall have effect.
- 13.2 Where appropriate to do so the Client shall advise Typhoon of all visa, work permit, health, vaccination and other requirements which have to be complied with to enable Typhoon to provide the Services outside of the United Kingdom. The Client will be responsible for all costs (including without limitation the time it takes for Typhoon to obtain any documentation under this Clause) and will give every assistance to Typhoon so as to ensure that Typhoon can undertake the Services in connection with the Project and in accordance with the Contract.
- 13.3 All costs of travel outside of the United Kingdom shall be paid in advance by the Client. The class of travel will depend upon the seniority of any personnel and the length of time it takes to travel to the Project destination or to the Client. This will usually be business class.
- 13.4 The Client will be responsible for the costs of shipping and insuring all Materials goods and equipment required by Typhoon or ordered by the Client for the Project and including without limitation the clearance of such Materials goods and equipment through local customs (including the payment by the Client of local custom fees taxes and other charges) and the subsequent secure storage of such goods Materials and equipment.
- 13.5 The Client will be responsible for paying the cost of appropriate high quality hotel accommodation and the provision of meals and refreshments throughout the time that Typhoon or any of its team is outside of the United Kingdom.
- 13.6 Typhoon shall be entitled to request up to 100% of its Fees of the Project (including the costs of any estimated time that Typhoon anticipates spending outside of the United Kingdom in connection with the Project) such monies to be paid in accordance with the Letter of Engagement or under the Contract.
- 13.7 The Client will be responsible for all costs relating to:
- a. any provision of translators;
 - b. the costs of any local specialist services contractors professionals or the hire or purchasing of any equipment or materials;
 - c. the costs of lawyers in the event of any situation where it is appropriate for Typhoon or its representatives or its personnel to be represented locally by lawyers
 - d. the security of Typhoon, its personnel and any materials equipment or other property of Typhoon
 - e. any local taxes or other charges of any kind
 - f. Hospital, Clinical and Doctors' Surgeons' and Consultants' and other associated fees and health charges
 - g. internal transport costs of any and all description

- 13.8 It is for the Client to ensure that all local laws are fully complied with and that the Services to be provided by Typhoon are not unlawful illegal or in any way in contravention of any local laws or customs.
- 13.9 The Client fully indemnifies Typhoon in respect of any losses costs damages penalties or other awards made by any third party against it arising from or as a result of any breach of this Clause 13 whether or not caused directly by the Client.
- 13.10 All papers and documents relating to the Project shall be written in English. English law will apply to the contract and the parties agree to submit to the exclusive jurisdiction of the English courts.
- 13.11 If requested to do so the Client shall supply Typhoon with the full name and address of an agent in England who would hold irrevocable instructions to accept service of any proceedings.
- 13.12 Other than in respect of indemnity insurance, the Client will be responsible for fully insuring the Property the Project and any other property owned by the Client and will at Typhoon's request provide copies of any relevant insurance policy.
- 13.13 Unless agreed otherwise all payments shall be made in pounds sterling to Typhoon's bank account by electronic bank transfer, the details of which are contained in the Letter of Engagement. Any bank charges and all costs of converting other currencies to pounds sterling shall be the responsibility of the Client.
- 13.14 The Client will be responsible for all local taxes deductions and charges that are made by any Government or other regulatory authority outside of the United Kingdom and all payments due to Typhoon shall be paid without any such deductions.