

IONA Design

Terms and Conditions of Business

1. Definitions

- "The Company" is IONA Design Limited, trading as IONA Design, whose principal office is at: IONA Design Limited, Studios 4 & 5, 30-38 Dock Street, Leeds, LS10 1JF, T: 0113 244 9177, F: 0113 244 8177, E: info@ionadesign.co.uk
- "The Client" is the person, organisation, firm or company who accepts a quotation for the sale of the Work, places an order for the Work or whose order for the Work is accepted by IONA Design.
- "The Work" is the goods, services or works offered for sale by the Company and ordered by the Client.
- "The Correspondence" includes e-mail, facsimile transmission, electronic transmission and comparable means of communication.

2. Basis Of The Sale

- The following terms and conditions shall be the only terms and conditions governing the basis upon which work is carried out by IONA Design, notwithstanding any alternative conditions provided by the Client or anyone on the Client's behalf. No variation of these terms and conditions is permitted unless expressly accepted by a Director of IONA Design in writing.
- IONA Design acts in all Contracts as principal and not as the agent of the Client in dealings with the media and suppliers in respect of the Client's marketing communications.
- The Client is to provide IONA Design with a clear brief and to ensure that all facts given about their product or service are accurate and in no way misleading. IONA Design will co-operate fully with the Client and will use its best efforts to make the work successful. The Client agrees to help IONA Design to do so by making available all relevant information and co-operating as far as reasonably possible.
- The Client understands and accepts that where work is delivered by electronic means there may be transmission variations in respect of colour, sizing and general quality dependent on the specification of the transmitting and receiving equipment and as such the burden is on the Client to ensure prior to approval that the work is satisfactory in all respects.

3. Approval

- The Client's approval of copy and layouts will be IONA Design's unconditional authority to purchase production materials and prepare proofs and drafts and the Client's approval of proofs and drafts will be IONA Design's unconditional authority to publish.
- The Client's approval of scripts, layouts, storyboards, proofs with estimated costs will be IONA Design's unconditional authority to make production contracts.
- The Client's approval of venues and materials for events, schedules and estimates will be IONA Design's unconditional authority to make reservations and contracts for space, time, and other facilities under the terms and conditions required by media or suppliers.

4. Cancellation

Subject always to the notice and termination provisions contained below, the Client may request IONA Design to change, reject, cancel or stop all or any plans, schedules and work in progress and IONA Design shall take all reasonable steps to comply, providing that IONA Design can do so within its contractual obligations to media and suppliers. In the event of any cancellation or amendment, the Client shall reimburse IONA Design for any charges or expenses to which it is committed and furthermore shall pay IONA Design's fees covering those items.

5. Charges

- IONA Design's fees for any work shall be as stated in IONA Design's official quotation, relevant correspondence, or as contained in a verbal binding agreement between IONA Design and the Client.
- Charges for direct mail, exhibitions and special promotions are arranged by a separate agreement in each case, but are subject to the same terms and conditions as at 6a)
- All work carried out at the Client's request, whether experimentally or otherwise, shall be charged.
- A charge will be made to cover any additional work involved, where copy supplied by the Client is not clear and legible, or where, in our professional opinion, such copy is inadequate, incomplete, or otherwise unsuitable for use.
- the price of the Work shall be the quoted price. Estimates are based on current costs of production and, unless otherwise agreed, are subject to amendment on or at any time before acceptance to meet any rise or fall in such costs.
- IONA Design reserves the right, by giving notice to the Client, at any time before delivery, to increase the price of the Work to reflect any increase in the cost to IONA Design which is due to any factor beyond the control of IONA Design, (such as, without limitation, alteration of duties, significant increase in the costs of labour, materials or other costs, any foreign exchange fluctuation or currency regulations, any change in delivery dates, quantities or specification for the Work which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give IONA Design adequate information or instructions).
- If the Client requests that IONA Design cease working temporarily on a project then at the expiry of not less than 56 days IONA Design reserves the right to render an interim account in respect of all work done up to that point. IONA Design's charges will be calculated with reference to the proportion of the project which had been completed as a percentage of the original quotation.

6. Payment

- IONA Design will provide invoices monthly for work carried out on behalf of the Client. All accounts are payable within 28 days of the date of the invoice.
- IONA Design reserves the right to charge interest at the rate of 2% per month on all overdue invoices.
- Some suppliers, particularly production companies, photo libraries, market research organisations and exhibition contractors require payment in advance at various stages of production. The Client agrees to pay interim invoices in respect of such services immediately on presentation. Invoices for models will be similarly invoiced for payment immediately on presentation.
- Whilst ever any invoice remains unpaid in whole or in part, the Client acknowledges (in addition to any other right of lien given by law) IONA Design's right of lien over any document or item ("goods") belonging to the Client but in the possession, control or custody of IONA Design or any agent instructed by it on the Client's behalf. Without prejudice to any of its other legal rights, IONA Design may at the expiration of 14 days' written notice to the Client sell any of the Client's goods upon which IONA Design has any lien and shall, where the property in such goods is at the time of such sale in the Client, be deemed to be its agent for the purpose of effecting such sale. IONA Design may apply the proceeds of such sale towards the satisfaction of sums due or claims against the Client without prejudice the right to recover the balance thereof from the Client.

7. Preliminary Work

All work carried out, whether experimentally or otherwise, at the Client's request, shall be charged and in the event that no specific estimate or quotation was given the work will be charged at IONA Design's prevailing hourly rate at that time details of which are available at the Client's request.

8. Insurance

Unless expressly agreed in writing all goods (whether in transit or in the custody of IONA Design its servants or agents) must be insured for full replacement or reinstatement value and IONA Design will not be responsible for loss or damage caused to the Client's goods howsoever caused whether or not caused by any act or omission of IONA Design its servants or agents.

9. Copyright

- IONA Design and the Client acknowledge and agree that all intellectual property rights in design, artwork, copy, illustrations and any other items or work created by IONA Design, its employees or agents for the Client, vest in IONA Design. For the purposes of this agreement, intellectual property rights include (but are not limited to) logos, corporate identity, trade marks, service marks, trade or business names, copyright (including moral rights) and any drawings, manuals, illustrations, experience, lists, instructions, designs, artwork, photographs, plates and other Know-How created or acquired by IONA Design, its employees or agents.
- Unused or unpublished advertising or promotional plans, ideas and other intellectual property prepared by or on behalf of IONA Design shall remain IONA Design's property and shall not be assigned or licensed to or used by the Clients during the term of this agreement or subsequently, regardless of whether or not any physical embodiment of any creative work or item of intellectual property is in the Client's possession in the form of copy, artwork, plates or otherwise howsoever.

10. Legal Liability

Subject to the conditions set out below, IONA Design warrants that it will carry out its work with reasonable care and skill and that its work will correspond in all material respects with any specifications or requirements agreed in writing prior to the date of this Contract and save as expressly varied by IONA Design (acting by a Director) thereafter.

The above warranty is given by IONA Design and accepted by the Client in substitution for all express or implied representations, conditions and warranties statutory or otherwise as to (a) the state, quality, fitness for purpose or performance of any goods or services provided and (b) the standard of the Advertising Agency's workmanship and the state, quality, fitness or performance of any materials used in connection therewith and all such representations conditions and warranties are hereby excluded. The warranty is expressly subject to the following conditions:

- IONA Design shall be under no liability in respect of any defect in any of its work arising from any drawing, design or specification supplied by the Client.
- IONA Design shall be under no liability under the above warranty (or any other warranty, condition or guarantee) unless all sums due to IONA Design under the terms of this agreement and any other agreement between IONA Design and the Client have been paid in full and by the due date for payment;
- Subject as expressly provided for in this agreement, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. Any claim by the Client which is based upon any defect in the quality of work undertaken by IONA Design or its failure to correspond with agreed specifications shall be notified to IONA Design within 7 days from the date of completion of the works or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Client does not notify IONA Design accordingly, the Client shall not be entitled to treat the Contract as repudiated and IONA Design shall have no liability for such defect or failure and the Client shall be bound to pay the invoices raised or to be raised by IONA Design as if the work had been delivered or carried out in accordance with the Contract.
- Where any valid claim in respect of any work carried out by IONA Design based on any defect in the quality of that work or its failure to meet specification is notified to IONA Design in accordance with this agreement, IONA Design shall be entitled to undertake the work again in replacement for the work or the part of that work, free of charge or, at IONA Design's sole discretion refund or not raise an invoice to the Client for the cost of the works (of a proportionate part thereof), but IONA Design shall have no further liability to the Client.
- Except in respect of death or personal injury caused by IONA Design's negligence, IONA Design shall not be liable to the Client or to any other person, firm or company by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this agreement, whether in contract, in tort, misrepresentation or otherwise for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of IONA Design, its employees or agents or otherwise) which arise out of or in connection with the supply of goods or undertaking of work howsoever used by the Client or on its behalf by IONA Design or otherwise except as expressly provided for in this agreement.
- IONA Design shall not be liable if it is unable to carry out all or by the agreed or due date any provisions of the Work and/or services for any reasons beyond its control including, but not limited to, an act of God, legislation, war, fire, flood, drought, failure of power supply, riot and civil commotion, lock out, strike, other action taken by employees in contemplation or further into the dispute, or owing to an inability to procure materials required for the performance of the Contract. During the continuance of such a contingency, the Client may by written notice to IONA Design elect to terminate the Contract and to pay for work done and materials used but subject thereto shall otherwise accept performance of the Contract when available.
- Any date provided by IONA Design shall be an estimate only and IONA Design shall not be liable for any loss or howsoever arising caused by its failure to complete the Work or deliver the Work on a due or agreed date.

11. Advertising Standards

- IONA Design abides by rulings of the Advertising Standards Authority, by the British Code of Advertising Practice and by other codes of marketing and design standards laid down within the industry to ensure that all the work by IONA Design is legal, decent, honest and truthful.
- In order to satisfy the requirements of these codes or any statutory requirements and in the interests of the Client, IONA Design and the public, the Client agrees to supply IONA Design with any information necessary to enable IONA Design to comply with the codes and also agrees to undertake that all information supplied to IONA Design complies with the Trade Descriptions Act 1968 and any other Act of Parliament or statutory instrument or relevant legislation.

12. Confidential Information

- IONA Design acknowledges a duty not to disclose without the Client's permission during or after the term of appointment any confidential information resulting from work carried out on the Client's behalf.
- During the continuance of the Contract, IONA Design acknowledges its responsibility to treat in complete confidence all the marketing and sales information and statistics with which the Client may supply IONA Design in the course of the Work for the Client.

13. Termination

- IONA Design shall without prejudice to its other rights be entitled forthwith to demand immediate payment by the Client of all unpaid accounts and cancel this and any other contract between IONA Design and the Client without any liability attaching to IONA Design in respect of such cancellation and debit the Client with any loss sustained thereby if:-
 - The Client commits a material breach of any of these conditions (including non payment of any monies payable hereunder) and in the case of a breach capable of remedy fails to remedy the same within 7 days after receipt of a written notice giving particulars of the breach and requiring it to be remedied;
 - The Client is a company and:-
 - It convenes a meeting of its creditors; or
 - A proposal is made for a voluntary arrangement within the meaning of part I of the Insolvency Act 1986 or if a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) the creditors of the Client; or
 - It is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
 - A trustee, receiver or administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the Client;
 - A petition is presented or a meeting is convened for the purpose of considering a resolution (or other steps are taken) for the winding up of the Client otherwise than for the purpose of amalgamation or reconstruction where such amalgamation or reconstruction has the prior written approval of the company;
 - A petition is presented for an administration order; or
 - The Client ceases or threatens to cease to carry on business.
 - The Client is an individual or partnership or foreign company or other corporate entity and circumstances arise which in the reasonable opinion of IONA Design are of the same nature or effect as the circumstances listed in sub paragraphs (b) (i) to (b) (vii).
- Any waiver by IONA Design of a breach by the Client of any of these conditions shall not be considered as a waiver of any subsequent breach of the same or any other provision. If any of these conditions, including the restrictions and exclusions of the Client's rights whether expressed or implied by common law statute customer of the trade, course of dealings or otherwise shall be deemed void for any reason whatsoever, but would be valid if part of the wording thereof were deleted, the said condition shall comply with such modifications as may be necessary to make it valid and effective.
- If any provision of these conditions is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of these provisions in question shall not be affected thereby.
- All quotations, orders and contracts arising hereunder shall be construed in accordance with English law and shall be subject to the jurisdiction of the English Courts.

14. General

- Any notice required or permitted to be given by either party to the Contract under these conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as made at the relevant time, has been notified pursuant to this provision to the party giving the notice.
- No waiver by IONA Design of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision. If any of these conditions, including the restrictions and exclusions of the Client's rights whether expressed or implied by common law statute customer of the trade, course of dealings or otherwise shall be deemed void for any reason whatsoever, but would be valid if part of the wording thereof were deleted, the said condition shall comply with such modifications as may be necessary to make it valid and effective.
- If any provision of these conditions is held by competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of these provisions in question shall not be affected thereby.
- All quotations, orders and contracts arising hereunder shall be construed in accordance with English law and shall be subject to the jurisdiction of the English Courts.