

TERMS OF TRADE

1.0 Terms of Sale and Payment

- 1.1 All invoices are due for payment by the Customer by the 20th of the month following invoice. Where services are delayed at the request of the Customer or otherwise through no fault of Noise Ltd., the invoice balances are still required to be paid on the due date.
- 1.2 Noise Ltd. retains the right to invoice a deposit for Services undertaken. Noise Ltd. has no obligation to commence work until such deposit has been paid in full, and shall not be responsible for any consequential delays.
- 1.3 Noise Ltd. retains the right to invoice a progress payment for Services undertaken.
- 1.4 Failure to pay any sum when due may incur a penalty fee of 2% per month compound interest. Outstanding accounts may be referred to a debt collection agency or legal action undertaken in a court of law. All costs, disbursements, interest, fees and expenses incurred in collection will be added to the Customer's account balance.

2.0 Acceptance of Estimate and No Cancellation

- 2.1 By accepting an Estimate the Customer accepts full liability for all Estimate Totals and any other sums payable pursuant to those Contracts. The Customer acknowledges that the Estimate sets out the entire agreement between the parties and it has not relied on any oral or written representations made to it by Noise Ltd., by any employee or any agent. Terms which could be implied from past transactions, correspondence or conduct between the parties are expressly excluded.
- 2.2 Once an Estimate has been accepted and any deposit paid in full, the Customer acknowledges that this Contract may not be cancelled. If the Customer purports to cancel this Contract subsequently in writing or by conduct, the Customer agrees that Noise Ltd. may immediately forfeit the deposit.
- 2.3 Noise Ltd. reserves the right to suspend delivery of the Services at any time if the Customer is in breach of any of its obligations pursuant to this Contract or if Noise Ltd. has any doubts whatsoever as to the Customer's credit worthiness or its ability to meet its obligations under this Contract.

3.0 Customer Responsibility and Modifications to Services

- 3.1 The Customer acknowledges responsibility for supplying relevant material to Noise Ltd. where necessary. Failure to deliver material may delay delivery of Services and may also result in increased costs being incurred. The Customer agrees that any such costs shall be charged in addition to the Estimate.
- 3.2 Following receipt of the completed Services, it is the responsibility of the Customer to check for errors, omissions and accuracy of content and performance and to notify Noise Ltd. in writing of any modifications required.
- 3.3 Any modifications notified to Noise Ltd. after an inspection period of 14 days are not included in the Estimate and Noise Ltd. shall be entitled to charge at their standard rates for such additional remedial work.
- 3.4 Any modifications requested by the Customer which were not described by the original Estimate shall be treated as variations to the Estimate and shall be charged for accordingly.

4.0 Ownership Retention, Intellectual Property, Warranties and Indemnities

- 4.1 All rights, title and interest in any compilation of artwork, visual design, digital and database files contained within Services remain the property of Noise Ltd. until the Estimate has been paid in full.
- 4.2 All rights, title and interest in all Intellectual Property, concepts and systems contained

within Services which have been developed or provided by Noise Ltd. in relation to internet systems and programming, shall at all times remain the property of Noise Ltd.

- 4.3 Upon any breach by the Customer of its obligations which is notified to it by Noise Ltd., the Customer shall immediately:
 - 4.3.1 Cease all use of the Intellectual Property and the services and return all files and code relating to any Estimate to Noise Ltd.; and
 - 4.3.2 Destroy all copies (whether electronic or otherwise) of such files and code in the Customer's possession or control.
 - 4.3.3 Should the Customer, in Noise Ltd.'s sole opinion, fail to comply with its obligations pursuant to clause 4.3.2, then Noise Ltd. or its duly authorised agents, shall be entitled to enter the Customer's premises where such files or code may be situated and destroy, delete and/or remove the same.

4.4 All warranties, descriptions, representations or advice given as to the fitness or suitability for any purpose, tolerance to any conditions, similarity to sample, merchantability or otherwise, are expressly excluded. No agent, employee or representative of Noise Ltd. is authorised to make any warranties, representations or statements regarding services and Noise Ltd. shall not in any way be bound by any such unauthorised warranties, representations or statements.

4.5 The Customer undertakes that the Services shall not be used for any purpose for which it is not suitable and shall use all necessary skill and care in handling any Services. The Customer expressly agrees and acknowledges that Noise Ltd. shall not be liable for any material, statements, representations or information contained or used in any Services including, but without limitation, any material, statements, representations or information that:

- 4.5.1 is or is likely to be misleading or deceptive or otherwise infringing the Fair Trading Act 1986;
- 4.5.2 is in full or in part defamatory, in breach of copyright, trademark or other intellectual or industrial property right; or
- 4.5.3 is otherwise in breach of any provision of any rule of law.

4.6 Noise Ltd. shall not be liable for any consequential, direct, indirect, economic or special damage or loss incurred or suffered by the Customer or any third party directly or indirectly through their use of the Services, nor shall Noise Ltd. be liable for any loss of revenue, profits, goodwill, data or opportunities or loss of anticipated savings whether caused by negligence of Noise Ltd. or its employees or otherwise, whether or not Noise Ltd. was aware or should have been aware of the possibility of such damage. Without in any way limiting the foregoing, any liability of Noise Ltd. whether in contract, tort or otherwise for any loss, damage or injury arising directly or indirectly from any defect in or non-compliance of a Service or any other breach of Noise Ltd.'s obligations hereunder shall not in any event exceed an amount equivalent to the Estimate.

4.6.1 Noise Ltd. is not liable for any errors or omissions in copy or material contained in any Services where such copy or material is made available to the public through any means.

4.6.2 The Customer indemnifies and shall hold Noise Ltd. harmless from all claims, losses, damages, costs and liability asserted against Noise Ltd. by any person to the extent arising from or in relation to the Customer's breach or nonperformance of the Estimate or of its use of the Services or any acts or omissions of its employees, shareholders, directors or agents in connection with the breach or non-performance of the Estimate or of their use of the Services.

5.0 Consumer Guarantees Act

- 5.1 The Customer acknowledges that where Services are intended for business purposes the provisions of that Consumer Guarantees Act 1993 shall not apply.

6.0 Privacy Act

6.1 The Customer authorises Noise Ltd. to collect from any source whatsoever, retain and use personal information about the Customer for purposes of:

- 6.1.1 Assessing the Customer's credit-worthiness;
- 6.1.2 Undertaking any dealings or transactions with the Customer;
- 6.1.3 Enforcement of any legal or other rights Noise Ltd. may have against the Customer;
- 6.1.4 Making such disclosures as may in Noise Ltd.'s opinion be required for any of the above purposes.

7.0 General

- 7.1 If the performance by Noise Ltd. of its obligations is prevented by reason of "Force Majeure" (which shall include fire, casualty, accident, act of God, natural disaster, any law, regulation, strikes, labour disputes, shortage or lack of skilled labour, computer viruses, power failure, hardware or software failure, delay in transit or other causes whatsoever beyond the reasonable control of Noise Ltd.) then Noise Ltd. shall be excused to the extent of such prevention.
- 7.2 Noise Ltd. may at any time, vary these terms and conditions, and such variation shall become binding on the Client after notification of the variation in writing.
- 7.3 If any provision of this Terms of Trade is declared by any judicial or other authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority, the parties shall amend that provision in such manner as achieves the intention of the parties without illegality or, at the discretion of Noise Ltd., such provision may be severed from this Contract.
- 7.4 The failure by Noise Ltd. to enforce its rights at any time or for any period in relation to any one or more of the terms or conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of this Contract.

Definitions

"Customer" means the person or company party to this Contract and includes all successors, assigns and personal representatives.

"Contract" means the agreement between the Customer and Noise Ltd. in relation to any Services undertaken by Noise Ltd. including the following documents which, in the event of any inconsistency, will apply in the following descending order of precedence:

1. The accepted Estimate, written or e-mailed;
2. These Terms of Trade; and
3. The accepted Brief, written or e-mailed.

"Estimate" means the Estimate relating to production of services undertaken by Noise Ltd., and includes all references to fixed quotations.

"Estimate Total" means the total sum payable including GST for delivery of the Service as set out on the Estimate.

"Services" means any service to be provided by Noise Ltd. to the Customer which are anticipated by an Estimate accepted by the Customer.