

# TWENTY THIRD C

## Terms of Business

These are the Terms of Business referred to in our Terms of Engagement which together constitute a binding agreement (Contract) between us for the provision of our services.

### Agreed terms

#### 1. Interpretation

The following definitions and rules of interpretation apply in these Terms of Businesses.

- 1.1. Definitions:
  - Acceptance Date:** the date on which the Client notifies Twenty Third C in accordance with clause 4.2 that it has received and accepts as satisfactory and final the Media and all other Delivery Materials.
  - Briefing Document:** the document (if any) shown in the Terms of Engagement
  - Delivery Date:** the date set out in the Terms of Engagement Delivery
  - Delivery Materials:** the materials listed in the Terms of Engagement
  - Deliverables:** any Media or other product or part thereof and whether in initial, interim or final form delivered to the Client pursuant to Contract
  - Expenses:** expenses reasonably incurred by Twenty Third C in connection with the Services including any materials, travelling expenses, hotel costs, subsistence and any associated expenses.
  - Fixed Fee:** the fixed fee (if any) described in the Terms of Engagement.
  - Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
  - Key Personnel:** those persons listed in the Briefing Document who will provide services for the production of the Media, including animators, designers, editors, presenters or actors appearing in or providing voice-over contributions to the Media, the director, individual producer, lead photographer or cameraman, and editor.
  - Materials:** any materials, equipment or consumables used by Twenty Third C in relation to the delivery of the Services
  - Media:** the media or product and/or services to be provided by Twenty Third C to the client pursuant to the Terms of Engagement
  - Products:** the products of the Services, including the Media, the Delivery Materials and all performances and literary, dramatic, artistic and musical material incorporated into the Media but excluding rights in works owned by the Client.
  - Schedule/Milestones:** the agreed dates, times and locations for the preparation, production and post-production of the Media during the Term, as set out in the Terms of Engagement
  - Services:** the services to be provided by Twenty Third C under this agreement as set out in clause 3.
  - Term:** the period from the date of this agreement until the Acceptance Date or (if earlier) termination of this agreement.
  - Twenty Third C:** Twenty Third C LTD of 2s.03 10 Barley Mow Passage, London, Chiswick, England, W4 4PH (registered in England number 10340693)
- 1.2. Terms used in the Terms of Engagement shall have the same meaning in these Terms of Business save where the contrary is stated.
- 1.3. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

#### 2. Basis of contract

- 2.1. Terms used in the Purchase Order shall have the same meaning in these Terms of Business save where the contrary is stated.
- 2.2. The Terms of Engagement shall only be deemed to be accepted on the earlier of when at the Client's request Twenty Third C commences work or when the Client signs and returns the Terms of Engagement to Twenty Third C at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

#### 3. Engagement

In consideration of payment of the Price Twenty Third C agrees, to provide the Services. The Services will be as set out in the Brief and Scope of Works together with such other services as are agreed between the parties from time to time and include where appropriate the Deliverables.

#### 4. Creative control

- 4.1. The parties agree to meet from time to time as agreed between the parties to consult in good faith with each other over the editorial content and artistic direction of the Media provided that the Client shall, in its absolute discretion have final editorial and artistic control over the Media.
- 4.2. The Client Representative who shall have the right on behalf of the Client to accept as satisfactory as the case may be the story outlines, scripts, animation, voices, storyboards, design and music of the Media and the Client shall be responsible for the cost of any lengthening of the Schedule/Milestones necessitated by the exercise of such right, other than the cost of changes arising from acts or omissions of Twenty Third C.

#### 5. Obligations

- 5.1. Twenty Third C agrees that it shall:
  - (a) render the Services to a professional standard and in accordance with the Client's reasonable instructions and requests;
  - (b) perform the Services in willing co-operation with the Client via the Client Representative and where

- requested by the Client its other professional advisors and service providers such as the Client's PR or advertising agency;
- (c) be responsible for arranging and supervising the performance of the Services and delivery of the Delivery Materials;

5.2. The Client agrees that it shall:

- (a) Provide all such cooperation to Twenty Third C via the Client Representative and where requested by the Twenty Third C via its other professional advisors and service providers such as the Client's PR or advertising agency;
- (b) Where access to such is required to make the Media provide Twenty Third C with reasonable access to its premises at no expense to Twenty Third C inclusive of the cost of space, heat, light, power; and
- (c) inform all employees, agents and guests at its premises of the proposed filming and obtain relevant release forms duly signed by all such persons;
- (d) where necessary and agreed give Twenty Third C access to the Client's personnel and instruct such personnel to assist and support Twenty Third C wherever possible, to comply with Twenty Third C's reasonable requests in making the Media, and in particular to provide such information as Twenty Third C may request; and
- (e) provide access to any Client Input, digital information, company graphics and website for use in the Media.
- (f) keep all materials, equipment, documents and other property of Twenty Third C (Twenty Third C Materials) at the Client's premises in safe custody at its own risk, maintain Twenty Third C Materials in good condition until returned to Twenty Third C, not dispose of or use Twenty Third C Materials other than in accordance with Twenty Third C's written instructions or authorisation; and

## 6. Credit

Subject to Twenty Third C duly rendering the Services and not being in breach of any of its material obligations under this agreement, the Client authorises Twenty Third C to insert, or have the appropriate third party insert, credit as Twenty Third C of the Media on the end credits of the Media, with its name and web address printed on all hard copies of the Media and included alongside all online versions of the Media.

## 7. Payment

- 7.1. The Client shall pay Twenty Third C the Price in accordance with the Payment Terms on submission by Twenty Third C of a valid VAT invoice.
- 7.2. Where the work carried out by Twenty Third C has exceeded that set out in the Scope or where it is anticipated that it will be exceeded, the parties will meet together in good faith to agree a revision to the Price. Where the parties are unable to agree such revision the Client will pay Twenty Third C for any work outside the Scope on a pro rata basis to the Price together with any expenses reasonably incurred in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses.
- 7.3. Time for payment shall be of the essence of the Contract.
- 7.4. All amounts payable by the Client under the Contract are exclusive of amounts in respect of Value Added Tax (**VAT**) or any other sales tax chargeable from time to time.
- 7.5. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 8. Rights

- 8.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by Twenty Third C, unless otherwise stated in terms of engagement.
- 8.2. Twenty Third C grants to the Client, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 8.3. The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 8.2.
- 8.4. The Client grants Twenty Third C a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Client to Twenty Third C for the term of the Contract for the purpose of providing the Services to the Client.
- 8.5. To the extent it owns such rights ownership of the Deliverables shall vest in Twenty Third C.
- 8.6. The Client agrees that Twenty Third C may use the Client's name and intellectual property rights solely to the extent necessary for the purpose of providing the Services, such as by including them on Delivery Materials, referring to them in paperwork and in discussions with third parties in order to indicate the nature of the Media, and including them in Twenty Third C's own promotional materials and showreels in accordance with clause 8.4. The Client warrants that no such use shall infringe the rights of any third party.
- 8.7. Twenty Third C shall have the non-exclusive right for a period of 5 years from the Delivery Date to use extracts from the Media for its own promotional use in internal and client and prospective client presentations, showreels and on Twenty Third C's website. Each such extract must be no longer than three minutes in length, and the extracts used in any one promotional item must not exceed fifteen minutes cumulatively.

## 9. Confidentiality

- 9.1.

Twenty Third C shall not, without the prior consent of the Client, make to any third party any statement or supply any information or photograph or trailer relating to the Media or to the Services or to the business or legal affairs of the other, other than to state that it is producing the Media (but this shall not prevent proper disclosures of information to the parties' professional advisers or as required by law).

## *10. Publicity & promotion*

The parties agree in good faith to consult throughout the Term on publicity and promotional plans for the Client that involve use of the Media. All public relations, promotional and press activities undertaken shall be subject to the Client's prior written approval (such approval not to be unreasonably withheld or delayed).

## *11. Termination*

- 11.1. Either party may terminate this agreement with immediate effect by giving written notice to the other if:-
- (a) The other Party commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 Business Days after being notified in writing to do so; or
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- Without affecting any other right or remedy available to it, Twenty Third C may terminate the Contract with immediate effect by giving written notice to the Client if:
- (i) the Client fails to pay any amount due under the Contract on the due date for payment or
  - (ii) there is a change of control of the Client.
- (f) Without affecting any other right or remedy available to it, Twenty Third C may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and Twenty Third C if the Client fails to pay any amount due under the Contract on the due date for payment, or the Client becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(d), or Twenty Third C reasonably believes that the Client is about to become subject to any of them.

## *12. Consequences of Termination*

- 12.1. On termination of the Contract:
- (a) the Client shall immediately pay to Twenty Third C all of Twenty Third C's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied for which no invoice has been submitted, Twenty Third C shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - (b) the Client shall return all of Twenty Third C Materials and any Deliverables or Goods which have not been fully paid for. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 12.2. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 12.4. Neither party shall be liable to the other party for incidental, consequential, special or punitive damages or loss of profits which the other party may suffer arising out of any breach of this agreement.

## *13. Data Protection*

Each party shall, at its own expense, ensure that it complies with and assists the other party to comply with the requirements of all legislation and regulatory requirements in force from time to time relating to the use of personal data, including (without limitation) (i) any data protection legislation from time to time in force in the UK including the Data Protection Act 2018 and any successor legislation; and (ii) for so long as and to the extent that the law of the EU has legal effect in the UK, the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable EU regulation relating to privacy. This clause is in addition to, and does not reduce, remove or replace, a party's obligations arising from such requirements.

## *14. Limitation of Liability*

- 14.1. Nothing in this agreement limits any liability which cannot legally be limited, including:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation; and
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 14.2. Twenty Third C excludes liability for loss of profits, loss of agreements or contracts, loss of anticipated savings, [Loss of use or corruption of software, data or information, loss of or damage to goodwill and indirect or consequential loss.]
- 14.3. Subject to clauses 14.1-2 above Twenty Third C's total liability to the Client:
- (a) for damage to property caused by the negligence of its employees and agents in connection with this agreement shall not exceed £2 million for any one event or series of connected events;
  - (b) for loss arising from the Supplier's failure to comply with its data processing obligations under Clause 13 shall not exceed an amount equal to twice the Price; and
  - (c) for all other loss or damage which does not fall within sub-clause (a) or (b) shall not exceed an amount equal to the Price

## *15. Assignment and other dealings*

Neither party shall without the prior written consent of the Client, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

## *16. Third party rights*

No one other than a party to this agreement shall have any right to enforce any of its terms.

## *17. No partnership or agency*

- 17.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other party, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 17.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## *18. Waiver*

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## *19. Variation*

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## *20. Notices*

Any notice or other communication given to a party under or in connection with this agreement shall be in writing and sent to the address of the other party stated in the Engagement or any replacement address notified to the other.

## *21. Entire agreement*

- 21.1. This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 21.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

## *22. Jurisdiction*

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

## *23. Governing law*

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.