

# William Martin Productions

## Terms and conditions

These terms and conditions ('Conditions') apply to any provision of Services as defined below agreed to be provided by WMP to the Client, to the exclusion of any other terms and conditions including any such terms and conditions contained in any purchase order, confirmation or other document of the Client.

### 1. Definitions

In these Conditions:

Brief	means the Client's written brief setting out its requirements against which WMP has prepared the draft Budget and draft Proposal for approval by the Client;
Budget	means the estimated budget costings for the provision of the Services as agreed by WMP and the Client in writing.
Client	means the person, firm or company who has engaged WMP to provide the Services;
Client Materials	means any information, data, graphics, pictures, images, text, literacy or artistic work, software, designs, music, broadcasts and any other material required by the Client to be used by WMP in the course of the Services;
Confidential Information	means any technical, financial and commercial information obtained or received directly or indirectly from the other party in the course of or in anticipation of the Contract;
Contract	means the (i) Order (ii) any Special Conditions (iii) these Conditions (iv) the Proposal and (v) the Budget; any conflict or inconsistency between any of them shall be resolved in accordance with the priority of the list in this definition;
Deliverable	means any deliverable to be provided by WMP pursuant to the Services as set out in the Contract;
Proposal	means the specification for the work to be performed by WMP as agreed by WMP and the Client in writing;
Fixed Cost	means the fixed price for the Services as set out in the Proposal;
IPR	means any patent, trade mark, service mark, registered design, copyright, design right, database right, rights protecting confidential information, any applications for or rights to apply for any of the above and any other intellectual property right recognised in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such rights;
Ongoing Charges	means any charges to be paid periodically for any of the Deliverables or the Services as set out in the Proposal;
Order	means any order the Client places with WMP for the Services which is accepted by WMP, subject to these Conditions;
Rates	means WMP's standard rates of charge in force from time to time;
Services	means any of the design work (print, graphic, product or other), video production, live events and exhibition production, digital media, and/or consultancy services described in the Proposal;
Special Condition	means any special condition contained in the Proposal;
Supplier	means any third party supplier of products, services or venues engaged by WMP in the provision of the Services or any third party holder of any IPR required to be used by WMP in the provision of the Services;
Third Party Expenses	means any costs incurred by WMP in engaging a Supplier as part of the delivery of the Services;
WMP	means William Martin Productions (Registration no 1827287) trading as WMP

## 2. Provision of services

- 2.1. A Client Order shall only be deemed to be accepted when WMP issues written acceptance of the Order at which point and on which date the Contract shall come into existence. The Client must ensure the Order is accurate, complete and contains all necessary details.
- 2.2. WMP agrees to provide the Services to the Client on and subject to the terms of the Contract.
- 2.3. WMP will use its reasonable endeavours to provide the Services in accordance with the timetable set out in the Proposal. However, time for delivery will not be of the essence.
- 2.4. Pricing, delivery dates and such other details as maybe appear in draft Proposals and Budgets shall be valid for such periods as set out in those documents.

## 3. Scope of work

- 3.1. WMP will carry out the Services using reasonable skill and care and using personnel who are suitably qualified and experienced.
- 3.2. The Client may suggest changes to the Proposal by providing full written details to WMP. WMP will, if it thinks the changes are feasible, inform the Client of the effects that such a change would have on the Fixed Cost, the Ongoing Charges, any timescale for delivery or any other aspect of WMP's delivery of the Services. On receipt, the Client may either accept the change, in which case the Contract will be amended in accordance with WMP's information or withdraw the proposed change in which case the Contract will continue unchanged.
- 3.3. In no circumstances will WMP be obliged to do anything that it thinks may infringe the IPR or any other rights of any third party.
- 3.4. WMP shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and WMP shall notify the Client in any such event.

## 4. Client obligations

- 4.1. The Client shall:
  - 4.1.1. co-operate with WMP in all matters relating to the Services;
  - 4.1.2. provide WMP, its employees, agents, consultants and subcontractors, with access to such premises, office accommodation and other facilities as reasonably required by WMP and as set out in the Contract (specifically the Proposal);
  - 4.1.3. provide WMP with such information and materials as WMP may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects; and
  - 4.1.4. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start.
- 4.2. If WMP's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or a third party under the control of the Client, or failure by the Client or such third party to perform any relevant obligation:
  - 4.2.1. WMP shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays WMP's performance of any of its obligations;
  - 4.2.2. WMP shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from WMP's failure or delay to perform any of its obligations as set out in this clause 4.2;
  - 4.2.3. the Client shall reimburse WMP on written demand for any costs or losses sustained or incurred by WMP arising directly or indirectly from the Client Default.
- 4.3. If as a result of a Client Default, any event which would have triggered a payment to WMP is delayed, then the Client will immediately pay WMP that payment, even though it has not taken place, and the Budget and the Fixed Costs and Ongoing Charges will be deemed amended and the Client will pay the additional amounts accordingly.

## 5. Charges

- 5.1. The Client will pay WMP the Fixed Cost and the Ongoing Charges in accordance with the stages set out in the Proposal.
- 5.2. Unless included within the Fixed Cost or the Ongoing Charges, the Client will pay for any Services and Deliverables at the Rates and WMP may invoice the Client monthly for those charges.
- 5.3. All invoices are due to be paid within 30 days after the date of invoice.
- 5.4. The Fixed Cost, the Ongoing Charges, the Rates and all other charges payable to WMP are exclusive of VAT sales tax if payable or similar taxes, which the Client will pay in addition.
- 5.5. If any amount payable (Fixed Cost, Ongoing Charges, Rates) to WMP is not paid on or before the due date, without prejudice to WMP's other rights and remedies, WMP reserves the right to do either or both of the following:
- 5.5.1. to suspend the performance of the Services; and
  - 5.5.2. to charge additional fees and recover costs accordingly. The Client will pay such amounts to WMP on demand.
- 5.6. Without limiting any other right or remedy of WMP, if the Client fails to make any payment due to WMP under the Contract by the due date for payment (**Due Date**), WMP shall have the right to charge interest on the overdue amount at the rate of three per cent (3%) per annum above the Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 5.7. The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against WMP in order to justify withholding payment of any such amount in whole or in part.

## 6. Expenses and third party suppliers

- 6.1. WMP will use its reasonable endeavours to ensure that any Third Party Expenses do not exceed those set out in the Budget, but the Client will reimburse WMP on demand for all Third Party Expenses (whether or not in excess of the Budget) incurred or anticipated to be incurred in connection with the provision of any Services and Deliverables.
- 6.2. If WMP contracts with any Supplier in order to provide the Services, then the Client will indemnify WMP against any losses, damages, expenses and costs incurred by WMP from the Supplier which are a result (whether directly or indirectly) of any act or omission of the Client (unless due to WMP's negligence or breach).
- 6.3. If WMP directs that any contracts with any Supplier should be entered into directly between the Client and such Supplier, then the Client will:
- 6.3.1. promptly enter into such contract;
  - 6.3.2. properly perform all its obligations under such contract and WMP will not be liable for any delay or non-performance of the Services due to the Client's failure to comply with clauses 6.3.1 and 6.3.2 or the Supplier's failure to properly perform its obligations under the relevant Supplier contract.

## 7. Approvals

7.1. Where copy, script, treatment or other material is sent to the Client for final approval, the Client shall check it carefully and notify WMP in writing of any errors or alterations. WMP will use its reasonable endeavours to effect any changes so notified but WMP reserves the right to charge extra if any of these alterations either go beyond the Brief or are notified to WMP more than 3 working days after their supply to the Client. Where notification of errors is either delayed in this way or does not occur at all before publication, WMP will not be liable in respect of any such errors. WMP will also not be liable in respect of errors occurring where the Client either does not pay for proofs or mock-ups or oversees the print and production process itself or does not allow enough time in the production schedule to check layouts, copy, pagination or other content aspects. WMP cannot guarantee that any or all colours will be exactly replicated in the final version as published.

7.2. WMP will not be liable in respect of inaccuracies in translations commissioned by WMP on the Client's behalf, however WMP will use reasonable endeavours to ensure that such translations are sufficient for the Client's requirements.

## 8. Acceptance procedure

8.1. If the Client begins use of any Deliverable or Service for any purpose other than testing or evaluation, the Client will be deemed to have accepted that Deliverable and Service.

8.2. Any Deliverable and any Service will be deemed to have passed WMP's tests and been accepted by the Client if any failure to do so is attributable to any failure to provide any facility or function which is not included in any Proposal, or to any act or omission of anyone except WMP, or to any fault, defect, error or deficiency in any software, service, data or equipment which WMP has not provided to the Client, or due to a Client Default.

## 9. Warranties and limitation of liability

9.1. WMP warrants that the Deliverables will, following delivery to the Client, substantially meet the Proposal.

9.2. If WMP agrees with the Client that the Deliverables do not meet the Proposal, then WMP shall carry out such remedial work to the Deliverables as is necessary, in WMP's opinion, to meet the Proposal. Under no circumstances will WMP be liable for a breach of the warranty in clause 9.1 on the basis of style or composition or ideas to the extent that such style, composition or ideas have been approved by the Client. However, if the Client requires WMP to carry out further work on the Deliverables because it is not satisfied with the style, composition or ideas, then WMP may, in its absolute discretion, carry out such work and the Client will pay WMP for such work at the Rates.

9.3. The Client warrants that:

9.3.1. the Brief is accurate in all respects;

9.3.2. none of the Client Materials infringes the IPR or other rights of any third party or is obscene, libellous or in any other way unlawful.

9.4. WMP's liabilities and obligations are subject to the Client having complied with its obligations and to no alterations or modifications having been made to any Deliverable or Service by anyone except WMP.

9.5. These Conditions are in lieu of all other warranties, conditions, terms, undertakings and obligations whether express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

9.6. Nothing in the Contract limits or excludes the liability of either party for death or personal injury caused by the negligence of its employees, for fraud, or for any other matter which cannot be excluded by applicable law.

9.7. Subject to Clause 9.6, WMP's total liability to the Client in connection with the performance or non-performance of the Contract, whether in contract, or tort (including negligence) or arising in any other way, shall not exceed in aggregate the Fixed Costs and Ongoing Charges paid by the Client.

9.8. Subject to Clause 9.6 but otherwise despite anything else contained in the

Contract, WMP shall not be liable to the Client for any loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or spoiling of data, loss of contracts (in each case whether direct or indirect) or for any indirect or consequential loss, whether in all cases arising from negligence, or breach of contract, or in any other way, even if in each case WMP had been advised of, or knew of, the likelihood of that loss or type of loss arising.

## 10. Proprietary rights

10.1. Except in relation to any Client Material, the IPR in any Deliverables and other materials prepared in the course of rendering any Services or relating to any Deliverables are, as between WMP and the Client, reserved to WMP. WMP may grant licences to use such IPR to third parties.

10.2. Nothing in these Conditions transfers to the Client the IPR in any software, software tools, design concepts, know-how, techniques or methodologies which WMP uses in producing any Deliverable or in providing any Service, and WMP reserves the right to re-use and incorporate the same in other work or products.

10.3. Subject to the Client's full compliance with the provisions of the Contract, WMP grants to the Client, with effect from the date of acceptance or approval, as the case may be, a non-exclusive and non-transferable licence to use any of the Deliverables for internal business use only, or as otherwise set out in the Proposal. The Client may not sub-license the use of the whole or any part of the Deliverables or transfer them to anyone else without the prior written consent of WMP.

10.4. WMP will use its reasonable endeavours to obtain all permissions, clearances, licences and consents necessary for the Deliverables and as set out in the Proposal, the cost of which shall be counted as an Expense.

10.5. On every copy of any Deliverable that the Client makes, the Client will reproduce the copyright and other proprietary notices which appear on the copies which WMP supplies to the Client. The Client will not obliterate, remove or alter or attempt to obliterate, remove or alter any such notice.

10.6. Title to any physical media or other materials containing the Deliverables shall remain with WMP until any amounts payable by the Client under the Contract have been paid in full.

## 11. Non-solicitation

11.1. The Client agrees that it will not on its own account or in partnership or association with any person, whether directly or indirectly during the period of the Contract and for a period of 9 months from the termination or expiry of the Contract solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any employee of WMP who has been involved at any time in performing the Services. 9.7. Subject to Clause 9.6, WMP's total liability to the Client in connection with the performance or non-performance of the Contract, whether in contract, or tort (including negligence) or arising in any other way, shall not exceed in aggregate the Fixed Costs and Ongoing Charges paid by the Client.

## 12. Confidential information

12.1. Each party ("Receiving Party") undertakes:

12.1.1. to keep Confidential Information secret and confidential and to respect the other party's ("Disclosing Party") rights in it;

12.1.2. to use Confidential Information exclusively for the purposes of the Contract; and

12.1.3. to disclose Confidential Information only to those of its employees, contractors and consultants pursuant to the Contract to whom and to the extent that such a disclosure is reasonably necessary for the purposes of the Contract.

12.2. The provisions of Clause 12.1 shall not apply to Confidential Information that, the Receiving Party can demonstrate by reasonable, written evidence:

12.2.1. was, prior to its receipt by the Receiving Party from the Disclosing Party, in the possession of the Receiving Party without an obligation of confidence; or

12.2.2. is subsequently disclosed to the Receiving Party without any obligations of confidence by a third party who has not derived it directly or indirectly from the Disclosing Party; or

12.2.3. is or becomes generally available to the public through no act or default of the Receiving Party or its agents, employees, Affiliates or licensees; or

12.2.4. is independently developed by the Receiving Party without the aid, application, or use of Confidential Information of the Disclosing Party, as can be demonstrated by written records created at the time of that independent development.Contract.

12.3. **References/Marketing.** The Client agrees that WMP may reference the Client and work undertaken for the Client in future proposals for other clients and in other marketing communications (including referencing the Client on the WMP website).

### 13. Termination

13.1. The Contract will commence on the date WMP accepts the Order and will continue, unless terminated earlier in accordance with the other provisions of the Contract, until completion of the Services.

13.2. Either party may terminate the Contract with immediate effect by giving notice to the other party if:

13.2.1. the other party is in breach of any provision of the Contract and (if it is capable of remedy) the breach has not been remedied within 30 days after receipt of written notice specifying the breach and requiring its remedy; or

13.2.2. the other party becomes insolvent, or if an order is made or a resolution is passed for its winding up (except voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed over the whole or any part of the other party's assets, or if the other party makes any arrangement with its creditors.

13.3. Clauses 1, 5.2, 8, 9.5, 10.1, 11 and 13 will survive the expiry or termination of the Contract for any reason and will continue indefinitely.

13.4. On the termination of the Contract, howsoever caused, the Client will immediately pay WMP 100% of the Order value agreed.

### 14. General

14.1. **Notices:** Any notice to be given under the Contract must be in writing, may be delivered to the other party or parties by any of the methods set out in the left hand column below, and will be deemed to be received on the corresponding day set out in the right hand column below:

<b>Method of service</b>	<b>Deemed day of receipt</b>
By hand or courier	the day of delivery
By fax (provided the sender's fax machine confirms complete and error-free transmission of that notice to the correct fax number)	the next working day after sending or,if sent before 16.00 (sender's local time) on the working day it was sent
By e-mail	the day of delivery

The parties' respective representatives for the receipt of notices are, until changed by notice given in accordance with this clause, as set out in the Order in the case of the Client and in WMP's acceptance of the Order in the case of WMP.

## 14.2. Force Majeure.

14.2.1. Neither party shall be liable for any breach of its obligations hereunder resulting from any cause beyond its reasonable control. In such circumstances such a party may suspend performance of those of its obligations as are prevented by such cause. Notice of such cause shall be given in writing to the other party as soon as reasonably practicable, such notice to contain details of the relevant cause.

14.2.2. If performance of obligations is suspended for more than ninety (90) days then either party may offer to continue this Contract on the basis that those of its obligations as cannot reasonably be performed are cancelled. If such offer is rejected (or not accepted within a period of thirty (30) days of the date of the offer) then either party may terminate this Contract in respect of which performance has been suspended. Neither party shall have any liability to the other in respect of any such termination.

14.3. **Assignment:** Neither party may assign or transfer the Contract as a whole, or any of its rights or obligations under it, without first obtaining the written consent of the other party. That consent may not be unreasonably withheld or delayed.

14.4. **Illegal/unenforceable provisions:** If the whole or any part of any provision of the Contract is void or unenforceable in any jurisdiction, the other provisions of the Contract, and the rest of the void or unenforceable provision, will continue in force in that jurisdiction, and the validity and enforceability of that provision in any other jurisdiction will not be affected.

14.5. **Waiver of rights:** If a party fails to enforce, or delays in enforcing, an obligation of the other party, or fails to exercise, or delays in exercising, a right under the Contract, that failure or delay will not affect its right to enforce that obligation or constitute a waiver of that right. Any waiver of any provision of the Contract will not, unless expressly stated to the contrary, constitute a waiver of that provision on a future occasion.

14.6. **Entire agreement:** The Contract constitutes the entire agreement between the parties relating to its subject matter. Each party acknowledges that it has not entered into the Contract on the basis of any warranty, representation, statement, agreement or undertaking except those expressly set out in the Contract. Each party waives any claim for breach of the Contract, or any right to rescind the Contract in respect of, any representation which is not an express provision of the Contract. However, this clause does not exclude any liability which either party may have to the other (or any right which either party may have to rescind the Contract) in respect of any fraudulent misrepresentation or fraudulent concealment prior to the execution of the Contract.

14.7. **Formalities:** Each party will take any action and execute any document reasonably required by the other party to give effect to any of its rights under the Contract, or to enable their registration in any relevant territory provided the requesting party pays the other party's reasonable expenses.

14.8. **Amendments:** No variation or amendment of the Contract will be effective unless it is made in writing and signed by each party's representative.

14.9. **Third parties:** No one except a party to the Contract has any right to prevent the amendment of the Contract or its termination, and no one except a party to the Contract may enforce any benefit conferred by the Contract, unless the Contract expressly provides otherwise.

14.10. **Governing law:** The Contract is governed by, and is to be construed in accordance with English law. The English Courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, the Contract.

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