

# The Collective Marketing Agency Terms & Conditions

## Section A

### 1. Definitions

- 1.1. "Company" means The Collective Marketing Agency Limited trading as The Collective and The Collective Group
- 1.2. "Client" means the party names as such on the quotation, invoice, order confirmation or contract and/or agent acting on his/her behalf.
- 1.3. "Services" means the services set out in the proposal, quotation, invoice or contract.
- 1.4. "Account" or "Agreement" means the signed-off project/scope of work to be undertaken by the Company
- 1.5. "Contract" means the contract between the Company and the Client comprising these terms and conditions. These terms and conditions shall apply to all assignments, campaigns and other services set out in the quotation, invoice, order confirmation or contract insofar as shall otherwise specifically be agreed in writing by the Company, notwithstanding that the Client may choose to provide confirmation, purchase order or other document containing other terms and conditions. The Client shall not be entitled to rely on any representation or warranty, express or implied, which is not contained herein.
- 1.6. "Output" means any product or service supplied by the Company to the Client.
- 1.7. "Input" means any product or data received by the Company on behalf of the Client, in whatsoever format.

### 2. Force Majeure

The Company shall not be liable for any delay or failure in performance of its obligations under this agreement which is due to or results from any circumstances beyond its reasonable control. In any such event the Company shall be entitled to delay or cancel delivery of the Agreement.

### 3. Law

This agreement shall be governed and construed in all respects in accordance with the Law of England and shall be subject to the exclusive jurisdiction of an English Court of Law.

### 4. Proposal

- 4.1. The Company shall provide a Proposal to the Client for each project. The Proposal forms part of this agreement.
- 4.2. The Client assumes sole responsibility for ensuring that the Services described in the Proposal meets its requirements before signing the Proposal.
- 4.3. The Client shall return the signed Proposal by post or email. Upon receipt of this order acknowledgement, a contract shall be created between the Company and the Client for the supply of the Service.
- 4.4. Once the signed Proposal has been received, the Client acknowledges that they have read these Terms and Conditions, understands them and agrees to be bound by them.
- 4.5. For some Retainer proposals, the signed Proposal may be replaced with a Terms of Agreement document, the conditions of which are to be treated as per clause 4.4.

### 5. Payment Terms

- 5.1. For individual projects, the Company operates strict payment terms of 50% non-refundable booking confirmation deposit and the remaining 50% within 14 days of final invoice, with the exception of website projects (see Clause 21) and multiple deliverables projects (see Clause 30)
- 5.2. Where a deposit is required, the Company is not obliged to carry out any work before the deposit is received. In the event that any preliminary work is carried out prior to receipt of the deposit and the order is then cancelled the Company will invoice the Client for this work.
- 5.3. The Purchase Price is exclusive of VAT. VAT shall be charged at the prescribed rate at the date of invoicing. The Client shall pay the VAT to the Company as if it were part of the Purchase Price and all requirements and other provisions concerning payment of the Purchase Price shall apply accordingly.
- 5.4. The Purchase Price, once accepted by both parties as signified by the receipt of a signed Proposal, is applicable for 12 months or as stipulated in the Proposal, from the date of signing. The Company reserves the right to increase the price of any work outstanding after that period.
- 5.5. Prior to each payment due date, the Company shall issue an invoice to the Client. Unless otherwise stated in the Proposal, each invoice is payable within 14 calendar days.
- 5.6. If the Client fails to make payment on a due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to suspend or terminate the Service.
- 5.7. In the event that any payments due under these terms and conditions become overdue, interest on such amounts shall be payable by the Client, from the due date to the actual date of payment, after as well as before any judgment, at the rate of 7% over the base lending rate for the time being of National Westminster Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly.

5.8. In the event that any payments due under these terms and conditions become overdue, the Company reserves the right to add a fee of £100+VAT to cover the costs of administration of the debt.

5.9. All payments shall be paid in full without set off, deduction or counterclaim whatsoever.

5.10. Where any invoice includes a reduction due to an agreement to pay by Direct Debit or Standing Order, should the payment not be made by such means, the Company reserves the right to recharge the reduction.

5.11. The company reserves the right to vary the Purchase Price according to further requirements made by the Client subsequent to order acknowledgement. Any such variation shall be advised by the Company in writing and confirmed by the Client in writing before either the work proceeds further, or any charges are incurred.

5.12. Where the Proposal includes design work, unless otherwise stated in the Proposal, the Purchase Price includes an allowance for two sets of changes to each deliverable. Additional changes shall be charged at the prevailing hourly rate. Any such variation shall be advised by the Company in writing and confirmed by the Client in writing before either the work proceeds further, or any charges are incurred.

5.13. The charge for carriage of goods is at additional cost to the Client, unless otherwise stated in the Proposal.

5.14. The Company reserves the right to charge expenses when fulfilling the work. Any mileage shall be charged at the rate of £0.45p per mile. Hotel stays shall be charged at cost plus 10% and subsistence shall be charged at £35 per person plus vat. No expenses shall be incurred without the Client's express written agreement.

## **6. Retainer Agreements**

6.1 The retainer agreement conditions will be as detailed in the Agreement.

6.2. A deposit will be required on acceptance of the Proposal to secure the contract. For 12-month contracts this will usually consist of the first and last month's payments. The Company reserves the right to charge additional deposit amounts for contracts that are longer than 12 months.

6.3. The Company shall then invoice the Client monthly in advance, with the last months fee waived in lieu of deposit, unless otherwise stated in the Agreement.

6.4 Unless otherwise stated in the Agreement, the agreed monthly element of the Purchase Price shall be payable to the Company by the first working day of the month, in advance of the work to be carried out.

## **7. Intellectual Property Rights**

7.1. Once full payment has been made and the deliverables have completed and signed off, the ownership of the rights to the deliverables created will pass to the Client, subject to clause 9.1 within the Website and Video Production sections.

7.2. Third party materials, such as imagery, used in the deliverables may be subject to usage liabilities such as royalties and license fees. The Company shall procure such license as necessary for the use of third-party materials for use within the scope of the Proposal. The Client should obtain written consent from the Company for use of any part of the deliverables outside of the scope of the Proposal.

7.3. Unless otherwise stated in the Proposal, the Company reserves the continuing right to use any deliverables it produces for the promotion of its services.

## **8. Liability**

8.1 The Company shall not be liable to the Client for any loss or damage, costs or expenses (whether direct, indirect, incidental or consequential and whether relating to loss of profit, loss of business, business interruption, loss of data, depletion of goodwill or other such losses), suffered by the Client which arise out of or in connection with the supply of the Service or their use by the Client.

8.2. The Client assumes all risks as to the suitability, quality, and performance of the Service.

8.3. The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of this contract shall be limited to, and in no event shall exceed, the amount originally paid to the Company for the Service.

8.4. The Company shall not be liable for any loss, damage or delay which arises as a result of the termination of the contract between us, or for our compliance with relevant statutory or regulatory requirements.

8.5. It is the responsibility of the Client to ensure that the deliverables comply with all laws, regulations and codes in all countries where the deliverables are used. The Client agrees to indemnify the Company against any costs arising from the use or misuse of the deliverables.

8.6. No verbal or written information or advice given by the Company or its dealers, distributors, employees or agents shall in any way extend, modify or add to these conditions.

## **Section B – Video Production**

### **9. Quality**

It is the essence of this Proposal that all completed media and services supplied by the Company shall be of applicable production standards. The Company agrees that the media shall be of quality, artistically produced with direction, photography, sound, art, animation, synchronisation and other physical and aesthetic content as agreed upon in the bid estimate.

### **10. Furnishing materials, services, & releases**

10.1. Client - the Client shall supply branding materials, guides and required media elements, product and service notes and information, and related clearances.

10.2. Company - the Company shall deliver the completed project media(s) pursuant to this Proposal. The Company shall deliver to the Client all consents, waivers or releases from all talent and all persons or entities who have rendered services to the Company in connection with the Outputs to the extent permissible by applicable union or guild agreements. The Company shall supply everything else required for the delivery of the Outputs unless exceptions are so highlighted.

### **11. Changes in specifications**

If at any time, the Client desires to make any changes or variations from the completed project, script(s) or storyboard(s) in the Outputs or from any material or work in progress, and such changes result in additional costs to the Company, including person hours, reimbursement for such additional costs shall be payable in accordance with the terms for final payment.

### **12. Copyright**

12.1. The copyright of all material that has been captured by the Company is solely owned by the Company and protected under UK law. Upon completion and cleared funds, the Company will transfer the copyright ownership to the Client. However, the Company reserves the right to use the footage/material/media, either in sections or in its entirety, for promotional purposes. Copyright extends to the final delivered video, presentation or animation file. It does not include source files, footage, audio, project files or individual elements, where the copyright remains owned by the Company.

### **13. Copyright (material provided by Client)**

13.1. In the event of the Client providing material (video, audio, photographs, logos etc.) for inclusion into a Company production, copyright must firstly be obtained from the original copyright owner/material provider. In order for the Company to use this material the copyright must be explicitly transferred to the Company, or the material to be provided to the Company totally free of charge and the client will have to indemnify the Company against any future possible claims, disputes, expenses or similar that may arise for a third-party concerning usage of such material.

13.2. The Company reserves the right to use the final production in full or part content for promotional purposes.

### **14. Security/confidentiality**

The Company understands that some information for said media(s) may be of a confidential and/or sensitive nature. The Company agrees, at the Client's written request, to require, within reason, those engaged for the production to sign appropriate agreements not to discuss or disclose information about the product or the Outputs except as such disclosure may be necessary for the Company to produce media(s) in the usual and customary manner.

### **15. Performers Release Usage**

At all times the Company advises and recommends its Clients to use and enforce Performers Release Forms. No discounts or liability will be accepted by the Company if the production must be re-edited due to a performer refusing permission to show their image or use their audio in whatever form.

### **16. Revisions**

A 'draft' version of the production will be forwarded to the Client for their review. This draft may receive one set of minor revisions only which is included in the original agreed cost. Subsequent revisions thereafter or a major re-edit will incur an additional hourly rate of £115 + VAT per hour or part thereof.

### **17. Health and Safety**

In all instances the Company will reserve the right to remove any of its personnel and / or equipment from a location if it is deemed unsafe or if they are subjected to abusive or aggressive behaviour. In this instance the Client will be liable for any costs incurred as a result of this. The Company will observe the Clients' site safety rules at all times and will liaise with the Health and Safety Manager if deemed necessary.

## **18. Insurances (people, equipment etc.)**

The Company carries public liability insurance cover of £250,000. Upgraded specific project insurance cover can be provided if required upon request.

## **19. Bad Weather**

In the event of inclement weather, the Company reserves the right to change the date of filming to a more suitable day. The Company will not allow the safety of the equipment or personnel to be compromised.

## **20. Aborting Filming (either before or on shoot day)**

In the event of filming being delayed or aborted as a result of the client's lack of organisation, the Company reserves the right to charge the relevant days filming costs. A re-visit to site to carry out further works may incur additional cost.

## **21. Changing Filming Dates**

In the event of the Client wishing to change the filming date, within 11 working days and 28 working days of the booking, the Company reserves the right to charge the relevant days filming costs and all expenses incurred. Failure to comply may result in the Client becoming 100% liable for all costs incurred. A revisit to site to carry out further works will incur additional cost.

## **22. Equipment Substitution/Failure**

In the unlikely event that the Company experiences equipment failure or difficulties, all efforts will be made to find suitable replacement equipment as soon as possible. The equipment used on the day of filming will be at the discretion of the senior member of the film crew. In the event of equipment failure or damage in editing, a re-visit to site may be required, with no additional cost to the Client. No further claims or liability will be accepted.

## **23. Works Specified (as per estimate)**

All works undertaken will be as per the Company's written quotation provided in a pdf format by email or via an alternative electronic medium. The Client is obligated to ensure that this is thoroughly read, signed, and understood prior to booking. Any amendments or additional days filming will be charged at our daily rates.

## **24. Clear Access for Filming**

If filming venues are being organised by the Client, it is the Client's responsibility to ensure that the Company has clear access to all relevant locations required throughout the day. Delays in filming may incur additional charges.

## **25. Video Payment Terms**

25.1. For individual projects, the Company operates strict payment terms of 50% non-refundable booking confirmation deposit and the remaining 50% within 14 days of final invoice

25.2. Where a deposit is required, the Company is not obliged to carry out any work before the deposit is received. In the event that any preliminary work is carried out prior to receipt of the deposit and the order is then cancelled the Company will invoice the Client for this work.

25.3. The Purchase Price is exclusive of VAT. VAT shall be charged at the prescribed rate at the date of invoicing. The Client shall pay the VAT to the Company as if it were part of the Purchase Price and all requirements and other provisions concerning payment of the Purchase Price shall apply accordingly.

25.4. The Purchase Price, once accepted by both parties as signified by the receipt of a signed Proposal, is applicable for 12 months or as stipulated in the Proposal, from the date of signing. The Company reserves the right to increase the price of any work outstanding after that period.

25.5. Prior to each payment due date, the Company shall issue an invoice to the Client. Unless otherwise stated in the Proposal, each invoice is payable within 14 calendar days.

25.6. If the Client fails to make payment on a due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to suspend or terminate the Service.

25.7 In the event that any payments due under these terms and conditions become overdue, interest on such amounts shall be payable by the Client, from the due date to the actual date of payment, after as well as before any judgment, at the rate of 7% over the base lending rate for the time being of National Westminster Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly.

25.8. In the event that any payments due under these terms and conditions become overdue, the Company reserves the right to add a fee of £100+VAT to cover the costs of administration of the debt.

25.9. All payments shall be paid in full without set off, deduction or counterclaim whatsoever.

25.10. Where any invoice includes a reduction due to an agreement to pay by Direct Debit or Standing Order, should the payment not be made by such means, the Company reserves the right to recharge the reduction.

25.11. The company reserves the right to vary the Purchase Price according to further requirements made by the Client subsequent to order acknowledgement. Any such variation shall be advised by the Company in writing and

confirmed by the Client in writing before either the work proceeds further, or any charges are incurred.

25.12. The charge for carriage of goods is at additional cost to the Client, unless otherwise stated in the Proposal.

25.13. The Company reserves the right to charge expenses when fulfilling the work. Any mileage shall be charged at the rate of £0.45p per mile. Hotel stays shall be charged at cost plus 10% and subsistence shall be charged at £35 per person plus vat. No expenses shall be incurred without the Client's express written agreement.

## **26. Video Contract Liability**

26.1 The Company shall not be liable to the Client for any loss or damage, costs or expenses (whether direct, indirect, incidental or consequential and whether relating to loss of profit, loss of business, business interruption, loss of data, depletion of goodwill or other such losses), suffered by the Client which arise out of or in connection with the supply of the video Service or their use by the Client.

26.2. The Client assumes all risks as to the suitability, quality, and performance of the video Service.

26.3. The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of this contract shall be limited to, and in no event shall exceed, the amount originally paid to the Company for the video Service.

26.4. The Company shall not be liable for any loss, damage or delay which arises as a result of the termination of the contract between us, or for our compliance with relevant statutory or regulatory requirements.

26.5. It is the responsibility of the Client to ensure that the deliverables comply with all laws, regulations and codes in all countries where the deliverables are used. The Client agrees to indemnify the Company against any costs arising from the use or misuse of the deliverables.

26.6 No verbal or written information or advice given by the Company or its dealers, distributors, employees or agents shall in any way extend, modify or add to these conditions.

## **Section C – Website Development**

### **27. Website Payment Terms**

27.1. Website projects payment schedule is as follows:

27.1.1. 50% non-refundable deposit payable on receipt of the order acknowledgement; and

27.1.2. 25% upon the launch of the website demo

27.1.3. 25% upon final completion/website launch/sign-off.

27.2. The Company reserves its right to not undertake any work whilst the deposit remains unpaid.

27.3. All payments are to be received by the Company within 14 days

### **28. Design**

28.1. The design of the website will be started upon agreement of the proposal and once the order has been placed along with the receipt of payment for the deposit invoice.

28.2. The design will be presented to the Client in the form of a PDF document which will give a visual representation of what the page(s) will look like when coded. This document will allow the Client to decide if they approve the design or if amendments need to be made to the design before the development stage begins.

28.3. Included within the cost is allowance for up to 2 design revisions. If the Client requires further revisions of the design, then this could incur an additional design fee.

### **29. Development & Functionality**

The development of the website will only start once the Client has agreed the designs proposed. If any amendments are needed once the development has begun (after the point at which the original design and functionality has been agreed) the Company reserves the right to charge additional costs.

### **30. Demo**

Once the development of the website has been completed the site will be presented as an online 'demo'. This site is not visible to the general public and is for insertion of content by the Company or the Client (depending on agreement). The demo period is a maximum of 4 weeks, after which irrespective of whether the site has been launched the final payment will be due.

### **31. Website Launch**

31.1. The website will only be launched or 'go live' once the Client has paid in full the sum of the project and also any hosting fees which may be required to host the website. During launch there is a 48 hour 'propagation' period whereby the internet needs to recognise the site is live before actually being able to produce the website online.

31.2. Other aspects such as domain names being configured/transferred/bought may affect this period of launch due to the third parties involved in the above changes being made. The Company cannot be held liable for the third party's involvement and any effect this may have on the launch of the website.

### **32. Hosting**

32.1. If the Client decides to use the Company to host their website, then the Client accepts the Company does not guarantee 100% uptime on website service. If for some reason the website is not available for a period of time then the Company cannot be responsible for any loss of sale/custom/brand image or any other detrimental effects which may be seen as a result of server downtime.

32.2. The Company will put in every effort to ensure that any problems or issues that occur as a result of server downtime are resolved in a professional and prompt manner to ensure as little damage as possible is obtained from such events.

32.3. A monthly hosting fee will be charged on a 12-month basis unless otherwise agreed. At the end of any 12-month contract an automatic renewal of a further 12-month contract will occur, unless the website has been transferred to another hosting provider.

32.4. In the event of cancellation by the Client part-way through a 12-month contract, the Company reserve the right to charge a cancellation fee that will not exceed the full amount of the 12-month contract, to cover any cost the Company may have incurred.

32.5. The hosting fee is chargeable from the time the website space is created on the Company's servers.

32.6. If at any time the monthly hosting balance due is not paid by the Client, then the Client will receive 2 notices via email of an overdue account followed by a grace period of 7 days to make payment past the due date. If payment is not received in full within this time the Company reserves the right to suspend the hosting account until payment is received.

### **33. Hosting Using Another Provider**

If the client is using another hosting provider for the website the Company cannot provide support on any level for any issues in relation to web hosting. The external web host company will be fully responsible for any issues and the

Company cannot accept responsibility for any aspect of any situation which has arisen whilst the website is hosted with another provider.

#### **34. Data-Backup**

The Company automatically backs up information stored on its servers at the end of each working day. If the Client requires additional backup the Company can provide a tailored solution.

#### **35. Future Website Amendments**

If the website is editable and accessible by the client, then the Company cannot be held liable for any edits which are made by the client which may result in any undesired changes. There may also be restrictions to the site which mean that further modifications upon the agreed design will incur additional costs due to the extra time needed to implement these changes.

## **Section D – Marketing Services**

The Company provides a variety of Marketing Services.

### **36. Payment Terms**

36.1. For printing and physical goods, unless otherwise stated in the Proposal, the Purchase Price shall be payable to the Company on receipt of the order acknowledgement.

36.2. For ad-hoc project work consisting of a single deliverable, unless otherwise stated in the Proposal, the Purchase Price shall be payable to the Company on receipt of the order acknowledgement.

36.3. For retained work billed monthly, see Clause 6

36.4. For project work consisting of multiple deliverables, unless otherwise stated in the Proposal, the Purchase Price shall be payable to the Company as follows:

36.4.1. 50% non-refundable deposit payable on receipt of the order acknowledgement; and

36.4.2. 25% upon the approval of the initial concept document.

36.4.3. 25% upon final completion/delivery/sign-off.

### **37. Deliverables including Goods**

37.1. Where a deliverable includes goods to be received by the Client:

37.1.1. The passing of risk shall occur on the day of the delivery to the Client.

37.1.2. If goods are received by the Client in any way damaged upon delivery, the Client must advise the Company within 24 hours of delivery of the nature of the damage and must retain the Goods as delivered.

37.1.3. The maximum extent of the Company's liability for damaged goods will be at its sole discretion depending on the circumstances: a return of the Purchase Price related to the goods or replacement of the goods.

37.1.4. Goods remain the property of the Company and title remains with the Company until payment has been made in full.

37.1.5. All times or dates given for delivery of the Service are given in good faith and shall not be of the essence of any contract.

37.1.6. The Company shall make every effort to achieve any quoted delivery dates and execute any obligations set out in the Proposal but will not be under any liability if delivery is delayed or prevented by events beyond its control or as a result of delays by the Client.