

Smithfield Agency Terms and Conditions

1. DEFINITIONS

- 1.1. The “Agency” means Smithfield and Associates Ltd, trading as The Smithfield Agency, whose registered office is at 20-24 Kirby Street, London, EC1N 8TS.
- 1.2. The “Agreement” means this agreement between the Agency and the Client for the supply of Work and Services.
- 1.3. The “Client” means the entity that appoints the Agency.
- 1.4. The “Term” means the period of agency appointment.
- 1.5. The “Work and Services” means the work and services to be provided by the Agency to the Client pursuant to this Agreement. This shall include advertising and media services that consist of planning, negotiation and buying; media evaluation; analysis of results and media administration, including the issuing of orders on the Client’s behalf. Any other work and services, in addition to the above, including but not limited to creative, direct marketing, design, marketing communications or any other ancillary work or services provided by the Agency to the Client from time to time will be subject to negotiation between the Client and the Agency.

2. ACCEPTANCE AND TERMS

- 2.1. By requesting any Work and Services from the Agency and/or accepting any fee proposal, designs, plans and/or materials produced by the Agency in the Agency’s performance of the Work and Services, the Client will be deemed to have accepted the terms and conditions of this Agreement, which will govern the provision of the Agency’s services to the exclusion of any other terms and conditions.

3. APPOINTMENT

- 3.1. The Client hereby appoints the Agency to provide the Work and Services during the Term on the terms and conditions set out in this Agreement.

4. MEDIA BUYING AND OTHER SUPPLIERS

- 4.1. The Client will pay the Agency for all media charges for advertising as approved in advance by the Client, in accordance with any media plan provided by the Agency.
- 4.2. Where media advertising by the Client shall be placed by the Agency, a commission of 15% (the “Commission”) shall be charged by the Agency on the gross amount payable by the Agency to the media for the Client’s advertisements. The Agency shall invoice the Client for the full cost of the advertising (including, without limitation, the Commission) immediately upon placing the Client’s advertisement and the same shall be payable forthwith.
- 4.3. All production sub-contracts shall be placed by the Agency. The Agency shall charge the invoice price from the supplier plus a handling fee of 15% on the gross amount payable by the Agency in relation to all Work and Services such as, by way of example, photography, artwork, blocks, typesetting and the production of television and cinema advertisements.
- 4.4. If the Client instructs the Agency to cancel or defer media bookings already planned and committed by the Agency on their behalf, commission will be charged at the agreed rates as though the advertisements has appeared. If these bookings are subsequently reinstated only 50% of the normal Agency remuneration will be charged to the Client for the re-instated bookings.

4.5. Interactive advertisements will be served and reported by the Agency using Adfor, Doubleclick DAR, Multiplex and Artemis and this will be charged at £0.20 per thousand advertising impressions where an image is served. Click reporting will be charged at £0.02 per click where no image is served.

5. OTHER COSTS

- 5.1. Any costs incurred by the Agency as a result of handling the billings of the Client will be charged to the Client directly on each media invoice in the form of an administration levy. This shall equate to 1% of the gross media advertising cost and will cover credit insurance and related computer (DDS) costs in addition to the Advertising Standards Board of Finance (ASBOF) and Broadcast Advertising Standards Board of Finance (BASBOF) levy applied on all advertising costs. Without prejudice to the foregoing, the Agency reserves the right to charge an additional fee in respect of any work of a specialised nature, any such fee to be agreed in advance by the Agency and the Client.
- 5.2. The remuneration shall include all travel, subsistence and despatch costs within the Greater London area which are incurred by the Agency in the course of providing the Work and Services specified in clause 2. All other travel, despatch, subsistence and other extraordinary costs, properly and reasonably incurred in providing the media service, will be chargeable to the Client at net cost to the Agency, provided each such expenditure has been approved in advance by the Client or is pursuant to a budget approved in advance by the Client.
- 5.3. Vouchers are checked by the Agency free of charge. If further press voucher copies are required by the Client, these will be charged at £1 per copy which covers the cost of the voucher service and delivery charges.
- 5.4. If any research services or competitive analysis is required by the Client which is not normally included within the Work and Services described in clause 1.4, the Agency will charge the Client on a quarterly basis at a rate to be agreed between the parties.

6. THE AGENCY'S ROLE AS PRINCIPAL

- 6.1. The Agency agrees to act as a principal and not as an agent in respect of all of their dealings with the media and other suppliers in respect of the Client's advertising.

7. CLIENT INFORMATION

- 7.1. The Client undertakes promptly to provide the Agency with all information, assistance and materials that the Agency requests from time to time to facilitate the proper and timely performance of the Work and Services.
- 7.2. The Client warrants that all information it supplies to the Agency hereunder shall be accurate and complete. It will not be legal, misleading or defamatory and will not infringe the intellectual property rights of any third party. The Client shall not in any way require the Agency to do any act or thing which may contravene the British Code of Advertising Practice, The Independent Television Commission Code of Advertising Practice for Television, the ITC Sponsorship Code, the Radio Authority Code and any other relevant codes of Practice or any relevant legislation or common law. The client will indemnify the Agency and keep the Agency indemnified in respect of any and all actions, claims or disputes arising from any claim that any material supplied to the Agency hereunder does not comply with such legislation and/or regulatory codes.

8. APPROVALS AND AUTHORITY

- 8.1. After obtaining the Client's general approval of campaigns the Agency will submit to the Client for specific estimates or quotations of the costs of the various items of advertising. It is the Agency's responsibility to negotiate the best possible terms for the Client.
- 8.2. The Client's written approval (which shall include email) of schedules and quotations will be the Agency's authority to make reservations and contracts for space, time and other facilities. For the avoidance of doubt, the Agency shall be entitled to assume that any person holding himself out to have the necessary authority to provide any approvals required from time to time pursuant to this clause 8 has such authority.

9. CONTACT REPORTS

- 9.1. Whenever a meeting or telephone call takes place between the Agency and the Client, a report will be prepared by the Agency minuting the discussion and forwarded to the Client. Discussions so reported will be considered to have the Client's approval unless otherwise notified within 48 hours from the date of receipt by the Client.

10. PAYMENT TERMS

- 10.1. The payment terms are based upon the principle that the Client will ensure that the Agency is paid in time to meet the liabilities which arise from orders placed by the Agency with the media owners in respect of the Client's advertisements.
- 10.2. All invoices in accordance with the agreed media schedule will be presented to the Client during the first few days of the month of transmission or insertion and shall be due for payment 30 days from the date of invoice.
- 10.3. Some media contractors require payment of their accounts to be in their hands by specified dates, otherwise a surcharge is incurred. The Client agrees to pay the Agency this surcharge if the Client fails to pay by the due dates without good reason.
- 10.4. All invoices presented to the Client by the due date and not subject to dispute, which are not paid by the due date, shall be subject to an interest charge of 2% over HSBC Bank base rate from time to time.
- 10.5. In the event of there being any queries in the Agency's invoices, the Agency will credit in full the invoice under query and then re-issue invoices separating the queried item. The Client will then pay the element which is not under query on payment terms which relate to the date of the original invoice.
- 10.6. The Client will promptly provide the Agency with purchase order numbers in respect of all approved media charges and the Agency will use such purchase order numbers on all relevant invoices. The absence of a purchase order number on an invoice will not constitute a valid reason for withholding payment.
- 10.7. The Agency is insured against credit risks and all clients of the Agency must be acceptable to the Agency's insurers. In the event therefore of the insurers revising or withdrawing cover for the Client, the Agency may have to revise its terms of payment and if necessary ask for payment in advance or suitable guarantees from the Client. Should the aforementioned occur and a suitable agreement can not be reached between the Client and the Agency within 14 days of such request, the Agency shall be entitled forthwith to terminate this Agreement by written notice to the Client.

11. CONFIDENTIAL INFORMATION

- 11.1. It is recognised that during the course of business certain confidential information concerning marketing, sales, new products, media buying rates and the like ("The Information"),

will be communicated to the Agency by the Company and visa versa. Both parties shall instruct all employees that they have an obligation to ensure confidentiality of The Information at all times. It is agreed that this obligation of confidentiality shall continue after termination.

12. LIMITATION OF LIABILITY

- 12.1. Nothing in this Agreement shall operate to exclude or limit the Agency's liability for death or personal injury caused by its negligence, or fraud or any other type of liability to the extent it may not be excluded or limited by law.
- 12.2. Subject to clause 12.1 the Agency's aggregate liability under or in connection with this Agreement, whether in contract, tort (including negligence) or otherwise, will under no circumstances exceed £1 million. The Agency will not be liable under this Agreement for any loss of actual or anticipated income or profits, loss of contracts or for any special, indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise, whether or not such loss or damage is foreseeable, foreseen or known.
- 12.3. The Agency shall not be liable for any delay in or omission of publication or transmission of any error in any advertisement in the absence of default and neglect on the Agency's part.
- 12.4. The Agency shall not be in any way responsible for the preparation, content, production, supplying or copy of advertisement.

13. TERMINATION

- 13.1. The parties' rights, duties and responsibilities shall continue in full force during the agreed notice period.
- 13.2. Without prejudice to any pre-existing liability of either party to the other, either party may by written notice terminate this Agreement forthwith in any of the following events:
 - 13.2.1. if the other commits a material breach of any of the terms of this Agreement;
 - 13.2.2. if the other commits any breach (other than a material breach) of any of the terms of this Agreement and has failed to make good any such breach within 14 days of being required to do so by written notice identifying the breach and the steps which must be taken to remedy the same;
 - 13.2.3. Save in relation to a solvent reconstruction or amalgamation of the Company, if the other enters into or proposes a voluntary arrangement or composition with creditors, or reconstruction of its debts, or if its directors make a declaration of solvency for the purpose of a members' voluntary winding up, or if notice is given of a creditors' meeting in connection with a creditors' winding up, or if a special resolution is passed that the company be wound up by the court, or if an administrative or other receiver is appointed or if the court makes an administrative order or orders that the company be wound up by the court, or if the company ceases to carry on its business or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.
- 13.3. Upon termination of this Agreement and payment by the Company of all items properly chargeable to the Company, the Agency will co-operate in transferring, with the approval of the third parties, all reservations, contracts and arrangements with third parties and all materials which are the Company's property with all rights and claims relating to these items.

14. FORCE MAJEURE

- 14.1. The Agency shall be under no liability if it is prevented from or unable to perform any obligations owed by it to the Client for any reason beyond its control including (without

prejudice to the generality of the foregoing) Act of God, legislation, executive action, war, fire, flood, drought, breakdown or other failure of all or part of its machinery, failure of power supply, lock-out, strike or other action taken by employees in contemplation of furtherance of any dispute or owing to any inability to procure materials or labour required for the performance of such obligations.

14.2. Either party shall have the right to terminate the Term if an event of the type describe clause 14.1 above endures beyond [30 days].

15. NOTICES

15.1. All notices and other communications required or permitted to be served or given hereunder shall be in writing and delivered by hand or sent by first class registered post or courier to the intended recipient's address as specified in this Agreement or such other addresses as either party may notify to the other from time to time.

16. ENTIRE AGREEMENT

16.1. Except as provided in this clause 16.1, neither party shall have any remedy in respect of any untrue statement (whether written or oral) made to it on which it relied in entering into this Agreement ("Misrepresentation"), and neither party shall have any liability other than pursuant to the express terms of this Agreement. Nothing in this Agreement shall exclude or limit either party's liability for any Misrepresentation made fraudulently Each party's liability for any Misrepresentation as to a fundamental matter, including as to a matter fundamental to that party's ability to perform its obligations under this Agreement.

17. THIRD PARTY RIGHTS

17.1. This Agreement is made for the benefit of the parties to it and is not intended to benefit, or be enforceable by, any other person.

18. VARIATION AND WAIVER

- 18.1. A variation of this Agreement shall be in writing and signed by or on behalf of both parties to this agreement.
- 18.2. A waiver of any right under this Agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.
- 18.3. Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

19. SEVERANCE

19.1. If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

20. GOVERNING LAW AND JURISDICTION

20.1. This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

20.2. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).