

1 INTERPRETATION

1.1 In these conditions

"Authorised Supplier" shall mean a Supplier who has been registered with the Company as an acceptable source of supply and who has an authorised supplier number given to it by the Company.

"Business" means those direct marketing, sales promotion, and other similar activities undertaken by the Company on behalf of its clients.

"Conditions" means the terms and conditions for the purchase of Goods and/or Services which are set out in this document.

"Company" means TBWA\MCR Ltd (Company Number 2160991) of 4th Floor, Canada House, 3 Chepstow Street, Manchester, M1 5FW

"Goods" means all articles, products, materials, supplies, drawings, electronic data or other items which the Supplier is requested to supply in accordance with the Purchase Order.

"Materials" means any samples, designs, photographs, transparencies, artwork, plans, lists, data or the like supplied by the Company or its client, or where relevant, any library or other third party for the purpose of producing the Goods or otherwise in connection with the order.

"Price" means the total sum payable by the Company to the Supplier for the purchase of the Goods and/or Services specified in the Purchase Order and unless otherwise specified in the Purchase Order shall, as regards any Goods, include all wrapping and packing materials, cases, pallets and the cost of transportation and delivery.

"Purchase Order" means the request printed on the form overleaf or to which these Conditions are attached and which is used by the Company in relation to its Business to specify the Goods and/or Services ordered from the Supplier.

"Services" means all services which the Supplier is to supply to the Company in accordance with the Purchase Order and the Conditions.

"Special Conditions" means any special terms and/or conditions which have been agreed in writing between the Company (by one of its directors) and the Supplier and which are specifically referred to in and incorporated into the Purchase Order including, but not limited to, Master Supplier Agreements and Supplier Specific Agreements. Special Conditions will always take precedence over the Conditions in circumstances of conflict or ambiguity.

"Supplier" the person, firm or company to whom the Purchase Order is addressed and shall as the context permits, include any employees, officers, partners, representatives or sub-contractors of the Supplier.

1.2 The headings and punctuation used in these Conditions are for convenience and reference only and shall not affect their interpretation.

2. BASIS OF PURCHASE

2.1. The Company agrees to purchase the Goods and/or Services specified in the Purchase Order for the Price subject to and in accordance with the Conditions.

2.2. The Company will not be bound by any order for the purchase of Goods and/or Services unless either the Purchase Order is addressed to an Authorised Supplier whose Authorised Supplier number appears on the Purchase Order or unless the Purchase Order is countersigned by a director of the Company applying temporary recognition to the Supplier as an Authorised Supplier where that Supplier has applied to the Company in writing for full and formal recognition as an Authorised Supplier.

2.3. The Supplier agrees to sell the Goods and/or Services identified in the Purchase Order for the Price subject to and in accordance with the Conditions which shall govern the contract between the Supplier and the Company to the exclusion of any other terms and conditions whether appearing on any quotation, acceptance form, delivery note or other documents emanating from the Supplier. Any such alternative conditions proposed by the Supplier shall have no effect whatever except insofar as they accept the Purchase Order and the Conditions.

2.4. Any Special Conditions purporting to vary the Conditions must first be agreed by the parties and must appear in writing on the face of the Purchase Order or in a separate Master Supplier Agreement and/or Supplier Specific Agreement signed by the parties.

2.5. Any Purchase Order bearing Special Conditions must be signed by a director of the Company and countersigned by a person duly authorized on behalf of the Supplier before taking effect. No other purported variation to the Conditions on the face of the Purchase Order shall be binding upon the parties.

3. SPECIFICATION

3.1. The Company shall benefit fully from the implied terms warranties and conditions which are contained in sections 12, 13, 14 and 15 of the Sale of Goods Act 1979 (as amended) as if each such term, warranty or condition had been repeated in full within these Conditions as warranties given to the Company and terms and conditions agreed upon with the Company by the Supplier.

3.2. The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and/or the performance of the Services and will comply with all statutory requirements and regulations relating to the sale of the Goods or the provision of the Services.

3.3. The Company is relying upon the Supplier's skill and judgement to select and/or provide it with suitable Goods and/or to perform the Services satisfactorily and in either event, in accordance with the Purchase Order.

3.4. Any changes from the original Purchase Order requested and agreed to by the parties including any changes to quantity, description, delivery dates, Price or otherwise shall only be effective if contained in a supplemental Purchase Order delivered by the Company to the Supplier receipt of which the Supplier shall acknowledge in writing as soon as is possible.

3.5. Without prejudice to its statutory and common law rights, the Company reserves the right to reject without payment any Goods which in its opinion are not of merchantable quality or are not reasonably fit for the purpose for which they were intended or which are not free from defects or which do not meet the sample or specification standards set by the Company.

3.6. The Company shall not be deemed to have accepted any goods until it has had a reasonable time following delivery within which to inspect them or if later within a reasonable time after any latent defect in the goods has become apparent.

3.7. The Supplier shall repay in full to the Company the Price for any Goods rejected by the Company unless the Company agrees to allow the Supplier to arrange prompt correction, completion or replacement of the Goods at the Supplier's own expense (including transportation charges) and to the Company's satisfaction.

3.8. The Company may at its entire discretion and at the Supplier's cost attempt to remedy any defect in the Goods either itself or from an alternative source in order to maintain the delivery schedule for the relevant Business.

3.9. The Supplier warrants to the Company that any Services provided by it will be performed by appropriately qualified and trained personnel who shall act with due care and diligence and that the Services will be provided to such high standard of quality as it is reasonable for the Company to expect in all the circumstances.

4. DELIVERY

4.1. The Supplier shall deliver the Goods at the location, on the date and, if specified, at the time stated in the Purchase Order.

4.2. The Supplier must obtain a legible signature on the delivery note from a person with apparent authority to receive the Goods on behalf of the Company. If the Supplier is unable, upon request, to produce a copy of the said signature, the Company shall not be regarded as having received the Goods.

4.3. Time of delivery when specified in the Purchase Order shall be of the essence of the contract and the Company shall be entitled to reject any Goods and/or Services which are not delivered or provided on time.

4.4. If the Purchase Order requires delivery of the Goods by instalments such instalments shall be delivered precisely at the times, in the manner and in the quantities as required by the Purchase Order. Otherwise the Supplier shall not be entitled to deliver the Goods by instalment.

4.5. The Company reserves the right upon giving to the Supplier reasonable notice and during normal business hours to inspect the Goods (including artwork and designs) during the course of their production at the Supplier's premises or those of the Supplier's sub-contractors.

4.6. Where any printing or other form of reproduction is ordered, proofs must be delivered to the Company for its approval in writing before completion of the work unless the Supplier is instructed in writing to proceed without production of proofs.

4.7. There shall be no unders or overs. The Company shall be entitled to require the Supplier at its own cost to destroy any overs and to produce evidence of such destruction to the Company forthwith upon demand.

4.8. A detailed delivery note quoting the Purchase Order number but omitting reference to Price must be attached to the Goods or handed over with the Goods at delivery. The Company shall be entitled to reject any Goods which are not accompanied by such a delivery note.

5. INVOICING

5.1. All invoices must be submitted to the Company's accounts department at such address as may be notified to the Supplier from time to time and must be accompanied by a copy of the Purchase Order specifying the Purchase Order number, the Project Number and the Supplier's Authorised Supplier Number.

5.2. Invoices must be addressed to "The Accounts Payable Department" at the Company and not to a named individual and submitted by email to ap-tbwamcr@omcoasys.com

5.3. The invoice date should not predate the TBWA\MCR Ltd purchase order date.

5.4. Unless otherwise agreed in the Purchase Order, the Supplier shall be entitled to invoice for the Goods and/or Services after all of the Goods have been delivered or after all of the Services have been performed.

5.5. Payment will be made by the Company 60 days from the end of the month in which the Supplier's invoice is dated or, if later, completion of the relevant Services and/or delivery of the Goods, on receipt of supplier statement.

6. PROPERTY AND RISK

6.1. Any Materials delivered to the Supplier for the purpose of producing the Goods and/or Services shall in all respects remain the property of the Company, its client, or where relevant, the library or third party by whom the Materials were provided.

6.2. All such Materials shall remain entirely at the Supplier's risk until safely returned in good condition to and accepted by the Company at its normal trading premises or as it may direct upon completion of the order.

6.3. The Supplier shall have no right of lien over any such Materials in any respect and shall return them immediately upon demand by the Company.

6.4. If any of the Materials are lost or damaged by the Supplier, the Company shall be entitled to recover from the Supplier the full cost of having to reproduce or recreate the relevant Materials including any costs chargeable by a library or other owner of the Materials for the loss of or damage to transparencies, artwork or the like.

6.5. Property in the Goods shall pass to the Company upon delivery or on payment of the Price, whichever first occurs. Property in moulds and/or final films shall be vested in the Company at the date of production unless otherwise specified.

6.6. Risk of damage to or loss of the Goods shall pass to the Company at the time of effective delivery with a completed delivery note.

6.7. Any Goods damaged or lost in transit shall be promptly replaced free of charge by the Supplier.

6.8. Where the Supplier receives money as agent for the Company (or its clients) including, in particular but without prejudice to the generality of the foregoing, money received from third parties in response to an offer made by Company (or its clients) money supplied by the Company specifically

to be sent to third parties (whether by cheque, in cash or otherwise) or money supplied by the Company to enable delivery to third parties to be arranged (whether by post or otherwise) the Supplier shall hold such monies in Trust in a separate bank account and shall use such monies only as directed by the Company and shall not be entitled to use such monies for the purpose of set-off or otherwise charge such sums against any other liabilities whatsoever.

6.9. Where the Supplier receives, holds and/or despatches any form of goods or materials as agent for the Company (or its clients) the Supplier shall take all reasonable steps to safeguard and protect such goods or materials including providing adequate insurance against all normal risks in the full replacement value thereof and shall fully indemnify the Company against any losses sustained to such goods or materials while in the care of the Supplier.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. The Supplier hereby assigns to the Company with full title guarantee the copyright and all other rights of a like nature including all intellectual, design or industrial property rights including any goodwill in the Goods throughout the world for the full period during which any such copyright or other rights may subsist including any renewals or extensions of such periods.

7.2. If the assignment contained in these Conditions is deemed ineffective in any jurisdiction to vest the full copyright or other such rights in the Company, the Supplier will, on demand and without further payment, execute any such assignment or other document as shall be necessary to vest, perfect or record the assignment of all such rights in the Company with full title guarantee and absolutely.

7.3. The Supplier as "author" for the purpose of the Copyright, Designs and Patents Act 1988 hereby absolutely, unconditionally and irrevocably waives any moral rights granted by sections 77 and 80 of that Act in respect of the Goods or, where the Supplier is not the "author" it warrants that those rights have not been asserted by the author.

7.4. The Supplier undertakes to procure that all those involved in the creation of the Goods unconditionally and irrevocably waive any moral rights they might otherwise have exercised in relation to the Goods.

7.5. If the Goods or any part thereof have been created by a sub-contractor of the Supplier, the Supplier shall procure and ensure that such subcontractor completes, signs and delivers to the Company, as a deed, an assignment of any copyright or other intellectual property rights including any goodwill they might have in the Goods at no extra cost to the Company.

7.6. The Company or the relevant third party from whom any Materials have been acquired shall retain the copyright and all other intellectual property rights which they may have in all Materials provided to the Supplier to enable it to produce the Goods and unless otherwise specifically agreed in writing between the parties the Supplier shall have no rights in and shall obtain no copyright or any other intellectual property right in any such Materials.

7.7. The Company grants to the Supplier a limited non-exclusive licence to use any Materials supplied by it to enable the Supplier to create the Goods but such licence shall continue only until delivery of the Goods to the Company.

7.8. The Supplier warrants that the Goods delivered to the Company are original works and that the work completed by the Supplier for production of the Goods does not infringe any third party rights.

7.9. The Supplier warrants that, it is able to transfer with full title guarantee or licence unconditionally and irrevocably everything which forms part of the Goods as so delivered.

8. CONFIDENTIALITY

8.1. This Purchase Order and the Goods or Services which are the subject matter hereof together with all information, samples or Materials provided to the Supplier for the purpose of creating or providing the Goods or Services or which otherwise relate to any product, launch, business process, research, marketing plans, campaign, statistics or property of the Company or its clients shall be treated as strictly confidential as between the Supplier and the Company and shall not be disclosed by the Supplier to any third party or (except where necessary specifically for the provision of the Goods or Services) be used by the Supplier for any purpose whatsoever without the Company's prior written consent. The Supplier acknowledges and accepts that it has strict liability in this regard for the acts of any of its employees, officers, representatives or sub-contractors.

9. INDEMNITIES AND INSURANCE

9.1. The Supplier fully indemnifies the Company and shall hold the Company harmless from and against all damages, losses, costs, expenses, fees (including reasonable legal fees or the fees of experts) and any liabilities which shall have been incurred or suffered by including those incurred or suffered by the Company in respect of any action, proceedings or claim made or threatened by a third party against the Company:-

9.1.1. as a result of any failure by the Supplier to comply strictly with the requirements of the Purchase Order including any losses or costs incurred by the Company in procuring the Goods and/or Services from another source, in dealing with any additional administrative costs caused by such failure, by late delivery or in mitigating against potential losses such failure or late delivery might cause;

9.1.2. alleging that there has been an infringement or breach of any of the rights granted to the Company by or referred to in clause 7 above resulting in an allegation or claim that the Goods (or any device or process embodied therein) infringe any intellectual property rights, copyright, moral right, trade mark rights, design rights or similar third party rights;

9.1.3. alleging that there has been an infringement or breach of any of the agreements or warranties contained or referred to in any of clauses 3, 4, 6 7, or 8 above;

9.1.4. alleging that any Goods produced by the Supplier contains or depicts defamatory or offensive material;

9.1.5. alleging that the Goods contravene or offend against the provisions of any Act of Parliament, European legislation or other regulation governing or controlling such Goods; or

9.1.6. which otherwise results from any act, omission or failure by the Supplier to fulfil its obligations strictly in compliance with the Purchase Order and the Conditions unless the Supplier can show that the allegation or alleged infringement has been caused by the Supplier's compliance with written instructions received by it from the Company.

9.2. The Supplier shall at all times maintain full indemnity and liability insurance (including professional indemnity, public and employer liability insurance) providing cover against all normal risks (including those which might affect the Materials and/or the Goods and/or risks connected with the provision of any of the Services) and shall, if so requested by the Company, produce a copy of the policy, policies or policy schedule(s) together with a copy of the receipt for the last premiums due for that policy or those policies.

10. TERMINATION AND INTERRUPTION OF PERFORMANCE

10.1. The Company may at any time by written notice to the Supplier terminate the contract. Upon termination for any reason other than nonperformance or breach of the contract by the Supplier, the Company shall pay to the Supplier any costs reasonably incurred by the Supplier in the performance of the contract up to the date on which the Supplier received notice termination.

10.2. Should the Company's operation of its Business or the operation of the business of any of its clients be stopped, interrupted or restricted by any cause beyond its reasonable control including but not limited to war, civil commotion, strike, fire, explosion or other form of force majeure, the Company may, without incurring any additional liability to the Supplier, serve notice upon the Supplier identifying the relevant event and anticipated delay and altering the date or dates of delivery of the Goods or delaying the time of performance of the Services until the event or circumstance causing the stoppage, interruption or restriction has ceased. If delivery or performance has been suspended for any such reason, the Company shall not be liable to make any payment to the Supplier until the Goods are delivered or the Services are performed.

11. GENERAL

11.1. The Supplier may not assign or sub-contract the activities which are subject to the Purchase Order in whole or in part without the written consent of the Company. The Supplier shall ensure that any sub-contractor shall be subject to the Conditions as if an original party to the contract and named as such in the relevant Purchase Order.

11.2. No waiver by the Company of any breach of any Condition by the Supplier shall be considered to be a waiver of any subsequent breach of the same or any other provision of the Conditions nor shall any such waiver prevent the Company from enforcing its rights unless the waiver is given in writing and addressed to the Supplier.

11.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity and any other provision or part of these Conditions and the remainder of the provision in question shall not be affected thereby.

11.4. All notices, orders and instructions served upon the Supplier shall be deemed to be properly served if sent by hand, post, or fax to the address of the Supplier set out in the Purchase Order or to the principal place of business of the Supplier. Service shall be deemed to have been effected within 48 hours of midnight on the date on which the relevant notice was sent by whatever means.

11.5. The contract made under these Conditions shall be governed and construed in accordance with English law.