

Standard Terms & Conditions of Sale

Opus Media Limited

- 1) **Scope** – these Terms & Conditions (“the Terms”) shall apply to all quotations and offers made by Opus Media Limited and any purchase orders accepted by Opus Media Limited. The Terms shall apply to all sales made by Opus Media Limited to the extent that the Terms do not conflict with any express terms incorporated into any contractual undertaking between Opus Media Limited and any person, firm, company or other legal entity (“the Customer”) placing an order with Opus Media Limited. The Terms shall prevail over all other terms & conditions which the Customer seeks to impose or incorporate either within any communication from the Customer or implied by trade, custom or practice or course of dealing unless otherwise expressly agreed in writing by Opus Media Limited.
- 2) **The Contract** – by placing an order with Opus Media Limited, either directly or via their website [weareopusmedia.com] the customer is offering to purchase Products and/or Services from Opus Media Limited on the basis of these Terms. The contract shall only be formed when Opus Media Limited acknowledges acceptance of the order in writing or upon delivery of the Products or the commencement of delivery of the Services whichever occurs first. No pricing made available by Opus Media Limited shall constitute an offer capable of acceptance and Opus Media Limited expressly reserves the right to amend its prices at any time. Any images, drawings or descriptions made available by Opus Media Limited in any form or via any medium whatsoever are produced for guidance only and do not constitute part of an offer or part of the contract unless expressly agreed in writing. The Customer is responsible for checking that the terms and details of any order are correct and accurate.
- 3) **Contract Variations** –
 - i. Opus Media Limited reserves the right to vary or alter the specifications of its Products and/or Services at any time and without notice unless otherwise agreed in writing with the Customer.
 - ii. Any contract variation by the Customer must be submitted in writing to Opus Media Limited for assessment as to impact on price and delivery. Such variation will not have contractual legal effect until agreed in writing by both parties.
- 4) **“Products”** – Products governed by these Terms means any Products produced or sourced by Opus Media Limited as listed in the order and may include:
 - i. **Standard list Products** – these are part of Opus Media Limited’s standard range of Products which are available for purchase by all customers and are publicised as being for general sale in company marketing documents and/or on the company website;
 - ii. **Bespoke Products** – these are non-standard Products designed and produced by Opus Media Limited to the explicit instructions and requirements of the Customer;
 - iii. **Sourced Products** – these are Products sourced by Opus Media Limited from third party suppliers and made available for sale under lawful agreement either in their sourced form or incorporated into Opus Media Limited’s own Products;
 - iv. **Customer Nominated Sourced Products** – these are Products sourced from a third party supplier at the Customer’s request and supplied to the customer either in the sourced form or incorporated into Opus Media Limited’s own Products. Opus Media Limited accepts no responsibility or liability for the performance, quality or delivery of these Products.
- 5) **“Services”** – Services governed by these Terms means any Services produced or sourced by Opus Media Limited as listed in the order and may include:
 - i. **Standard Services** – these are part of Opus Media Limited’s standard range of Services which are available for purchase by all customers and are publicised as being for general sale in company marketing documents and/or on the company website;
 - ii. **Bespoke Services** – these are non-standard Services designed and produced by Opus Media Limited to the explicit instructions and requirements of the Customer;
 - iii. **Sourced Services** – these are Services sourced by Opus Media Limited from third party suppliers and made available for sale under lawful agreement either in their sourced form or incorporated into Opus Media Limited’s own Services;
 - iv. **Customer Nominated Sourced Services** – these are Services sourced from a third party supplier at the Customer’s request and supplied to the customer either in the sourced form or incorporated into Opus Media Limited’s own Services. Opus Media Limited accepts no responsibility or liability for the performance, quality or delivery of these Services.
- 6) **Pricing** –
 - i. All pricing quoted is exclusive of VAT and any other applicable taxes or duties which will be charged at the prevailing rate where applicable.
 - ii. Unless otherwise agreed in writing all pricing is exclusive of any delivery charges.
- 7) **Delivery** –
 - i. Although Opus Media Limited shall try in all good faith to meet Product and/or Services delivery dates they are not guaranteed but are estimates based upon the information available to Opus Media Limited at the time of order confirmation. Under no circumstances shall Opus Media Limited be liable for any damages or losses whatsoever arising from any delay in delivery,

even if caused by Opus Media Limited's negligence, unless there is specific written agreement between Opus Media Limited and the Customer. Liability of Opus Media Limited shall be limited at Opus Media Limited's sole discretion to;

- a) Delivering the Products and/or Services within a reasonable time;
- b) Refunding (including issuing a credit note against a raised invoice) the pro-rata price based on the quantity of the Products and/or Services that are undelivered.
- ii. Delivery shall be made by Opus Media Limited to the delivery location specified by the Customer and shall require the Customer to have a responsible person at that location to accept and sign for the Products and/or Services. If there is no such person available at the specified delivery location then the Customer consents to either:
 - a) Opus Media Limited leaving the Products at that location and in this case risk in the Products will pass to the Customer at that time and no further liability shall remain with Opus Media Limited with respect to the Products to the limit permitted by applicable law and/or
 - b) Opus Media Limited refusing to perform the Services at that location.
- iii. If the Customer fails to take delivery of either Products and/or Services, delivery fails because of inaccurate delivery location information provided by the Customer or any other reason due to the negligence or fault of the Customer then Opus Media Limited can, at its sole discretion and without limitation to any other rights and remedies:
 - a) Charge the Customer for any delivery and recovery costs of the Products to and from the delivery location together with a £50 administration fee
 - b) Charge the Customer for any costs associated with the Services delivery failure together with a £50 administration fee.
 - c) Charge the Customer for any storage costs in order to store the Products for future delivery.
 - d) Invoice at full value for any Bespoke Products and or Services
 - e) Invoice at full value for any Sourced or Customer Nominated Sourced Products where such products cannot be sold elsewhere or returned for full refund to the original supplier within 15 days of the failed delivery.
 - f) Invoice at full value for any Sourced or Customer Nominated Sourced Services within 15 days of the failed delivery where such Services incur any charges from the original supplier.

8) Delivery in Instalments – if the Products and/or Services are delivered in instalments then each delivery shall constitute a separate contract. Any failure by Opus Media Limited to deliver any one or more instalment in accordance with these Terms shall not entitle the Customer to repudiate the entire contract.

9) Inspection of the Products –

- i. It is the Customer's responsibility to check that either:
 - a) That the quantities and specifications of the Products correspond to the contract and that there is no visible signs of damage before accepting and signing for delivery and/or
 - b) That the delivery of the Services complies with the specifications within the contract
- ii. Claims for damaged or faulty Products and/or non-compliance with the Services specification will only be accepted if made within 48hrs of delivery unless otherwise agreed in writing. The Customer must retain and store the disputed Products in good condition for inspection and collection.

10) Payment –

- i. Opus Media Limited will grant credit at its absolute discretion and reserves all rights to refuse credit to the extent of applicable law.
- ii. Unless otherwise agreed in writing payment for all Products and/or Services must be made as follows: Non-refundable deposit of 50% in advance, and 50% within 7 days of delivery of the project without any deductions unless agreed in writing. Time for payment shall be of the essence. A watermark will be placed on all images and video content and will only be removed upon receipt of final balance payment.
- iii. Failure to pay any overdue invoices or charges shall entitle Opus Media Limited to suspend any unexecuted or future orders without further notice and at their sole discretion.
- iv. Failure to pay according to these terms, or as otherwise agreed in writing, shall entitle Opus Media Limited to, at its sole discretion and without further notice, to charge Statutory Interest on any overdue balances together with a late payment fee of £50. Statutory Interest will be charged for the period from the payment due date until the date the date on which payment is made. Failure to pay any Statutory Interest and late payment fees shall also invoke clause 10(iii).
- v. If failure to pay is due to any cheques, standing orders or direct debits in the Customer's name being dishonoured then this will invoke clause 10(iii) together with a further charge of £80 to cover bank and administrative costs.
- vi. Set-off – Opus Media Limited reserves the right to, at any time and without limiting any other rights and remedies that it has, set-off any amount owed to it by the Customer against any amount owed by Opus Media Limited to the Customer.

- vii. Reimbursement of Expenses - The customer shall reimburse Opus Media Limited for all business expenses, which are reasonable and necessary and are incurred by Opus Media Limited while performing their duties under this Agreement, upon presentation of expense statements, receipts and/or vouchers, or such other information and documentation as the customer may reasonably require.

11) Risk, Title and Ownership – risk in the Products will pass to the Customer upon delivery. Ownership is established by the transfer of title which shall not pass to the Customer until payment has been made in full and the funds have been cleared. Until title has passed the Customer must act in his capacity of fiduciary owner and hold the Products as Opus Media's Bailee and, at no cost to Opus Media Limited, must also:

- i. Store the Products safely in suitable conditions separately from other Products such that they remain easily identifiable as Opus Media Limited's property
- ii. Maintain in good condition and do not destroy or deface any labelling, identifying marks or packaging associated with the Products
- iii. Maintain adequate insurance on [Customer Name]'s behalf for full value/price against all risks and to hold any proceeds of such insurance on trust for Opus Media Limited and not mix them with other monies or pay them into an overdrawn bank account.

The Customer shall not be entitled to resell the Products until title has passed to the Customer.

Where title has not yet passed to the Customer and the Customer commits a material breach of any of the obligations contained within these Terms or any contract governed by these Terms is terminated under clause 20 then Opus Media Limited shall be entitled to recover payment for the Products notwithstanding that the Customer does not have title to them.

The Customer grants Opus Media Limited, its agents, sub-contractors and employees an irrevocable licence to enter premises where the Products are known to be or believed to be stored to inspect and where the Customer has never had or no longer has title to recover the Products.

On termination of any contract governed by these Terms, the Customers obligations and Opus Media Limited's rights under this clause 10 shall remain in effect.

12) Intellectual Property - all Intellectual Property Rights created during the performance of any contract governed by these Terms is and shall remain the property of Opus Media Limited. Unless confirmed in writing and signed by an authorised representative of Opus Media Limited nothing in the terms of this agreement shall vest any ownership rights in the Customer. The Customer undertakes, at the expense of Opus Media Limited and at any time either during or after the execution of any contract governed by these Terms to provide all assistance, execute any required documents, make any applications and do any acts that are necessary to vest the Intellectual Property Rights in Opus Media Limited, to register them in the name of Opus Media Limited and to defend Opus Media Limited against any claims that the rights infringe third party rights. All information contained in all planning documents is provided in confidence for the sole purpose of adjudication of the document, and shall not be published or disclosed wholly or in part to any other party without Opus Media Limited's prior permission in writing, and shall be held in safe custody. These obligations shall not apply to information that is published or becomes known legitimately from some source other than Opus Media Limited.

13) Limitation of liability – Opus Media Limited limits its liability to the maximum extent permitted by applicable law and we expressly exclude:

- a. All representations, warranties and conditions relating to the supply of the Products and the use of them including, without limitation, any warranties implied by law in respect of satisfactory quality or fitness for purpose.
- b. Any liability for any direct, indirect or consequential loss or damage incurred by you in connection with use of the Products. This includes, but is not limited to, liability in respect of the Customer and/or any 3rd party for:
 - a) Loss of income or revenue;
 - b) Loss of profits;
 - c) Loss of business;
 - d) Loss of data;
 - e) Loss of goodwill;
 - f) Loss of opportunity
 - g) Any indirect, consequential or special loss or damage;
 - h) Wasted management or staff time;

Nothing in this disclaimer will:

- i. Limit or exclude our or our liability for death or personal injury resulting from negligence;
- ii. Limit or exclude our or our liability for fraud or fraudulent misrepresentation;
- iii. Limit any of our liabilities in any way that is not permitted under applicable law;
- iv. Exclude any of our liabilities that may not be excluded under applicable law.

Subject to the preceding provisions the limitations and exclusions of liability govern all liabilities arising from the supply of the Products and/or Services under contracts governed by these Terms including all liabilities arising in contract, tort (including negligence) and for breach of statutory duty.

14) Confidentiality - The Customer agrees that they will not disclose Opus Media Limited's Confidential Information to anyone other than an employee or consultant with the Customer, nor will they use any Confidential Information for any purpose other than for the execution of any contract governed by these Terms. Upon termination of this Agreement the Customer agrees to return all

Confidential Information in their possession to Opus Media Limited. For the purposes of this clause Confidential Information includes any information that is not already in the public domain that is:

- a. Information specifically designated by Opus Media Limited as confidential
 - b. Information relating to the components, costs, Production processes, profitability, development programmes or any information identified by Opus Media Limited as "trade secret" of any Product produced by Opus Media Limited
 - c. Information relating to business and marketing plans, customers or clients, associates, agents, partners or affiliates of Opus Media Limited
 - d. Information relating to business structure, processes, turnover, profitability or forward strategy of Opus Media Limited.
- The obligations of this clause shall survive the termination of the Agreement in perpetuity.

15) Bribery and ethics - neither party shall, at any time, engage in, nor require the other party to engage in, activities which are contrary to The Bribery Act 2010, The Competition Act 1998 or any other analogous local laws including but not limited to:

- a. The offering of any inducement or reward whether financial or otherwise to any 3rd party whatsoever in relation to the activities covered by this agreement.
- b. Any attempt to manipulate markets or engage in any activity that constitutes a restraint of free trade including, but not limited to, market share agreements, pricing fixing, predatory pricing or resale price maintenance.
- c. Both parties agree to uphold the highest standards of business ethics in their dealings with each other and 3rd parties associated with the activities covered by any contract governed by these Terms.

16) Health and Safety - Both parties shall ensure that any employees, associates, consultants or anyone else for whom they are vicariously liable shall at all times comply with any existing health and safety requirements on either party's premises and will at all times conduct themselves in a way that is in accordance with safe working practices whilst performing their duties under any contract governed by these Terms.

17) Data Protection - Both parties undertake and agree that they will comply fully with the requirements of the Data Protection Act 1998 and any other relevant analogous local legislation during the performance of their duties under any contract governed by these Terms. In this respect both parties will indemnify and hold harmless the other party from any of their actions in breach of data protection that lead to the other party being sued by a 3rd party.

18) Equality Act - Both parties undertake and agree that they will comply with all aspects of the Equality Act 2010 and will not directly or indirectly discriminate against any person during the performance of their duties under any contract governed by these Terms.

19) Privacy – Neither party will, under any circumstances, share or sell any of the other party's details or information to any 3rd party without that party's prior written consent.

20) Waiver - no waiver, by either party, whether implied or express, of any particular provision of these Terms, or of any breach or default of either party, shall constitute either a continuing waiver of such provisions or a waiver of any other provisions of the Terms.

21) Termination of Contract –

- i. **Cancellation by Customer** - any contract governed by these Terms may not be cancelled by the Customer without the Opus Media Limited's prior written consent. Upon giving consent Opus Media Limited reserves the right to charge a cancellation fee relating to Products that are the subject of the contract in order to cover liquidated losses by Opus Media Limited arising from the cancellation.
- ii. **Cancellation by Opus Media Limited** – Opus Media Limited can terminate any contract governed by these Terms immediately upon written notice to the Customer and suspend any further deliveries if the following happen or Opus Media Limited reasonably believes that they may happen:
 - a. The Customer fails to perform any of its obligations within the contract
 - b. The Customer suspends all payments and ceases or threatens to cease trading or performing its business obligations.
 - c. A receiver or administrator is appointed over any assets, including property, of the Customer
 - d. The Customer makes or proposes to make any voluntary arrangement with its creditors, enters into administration, is unable to pay its debts as they fall due, makes an application to a court to suspend enforcement action against it goes into liquidation or becomes insolvent.

22) Force Majeure - Opus Media Limited shall not be liable for delay in performing or for failure to perform its obligations if the delay or failure results from any of the following:

- i. Acts of God;
- ii. Outbreak of hostilities, riot, civil disturbance, acts of terrorism;
- iii. The act of any government or authority (including refusal or revocation of any licence or consent);
- iv. Fire, explosion, flood, fog or bad weather;
- v. Power failure, failure of telecommunications lines, failure or breakdown of plant, machinery or vehicles;
- vi. Default of suppliers or sub-contractors;
- vii. Theft, malicious damage, strike, lock-out or industrial action of any kind;
- viii. Any cause or circumstance whatsoever beyond Opus Media Limited's reasonable control

23) Notice - Any notice or communication served during the performance of this agreement shall be sent by hand or by recorded delivery first class post to the following address:

Opus Media Limited
Cotton House
Old Hall Street
Liverpool
L3 9TX

- 24) **Severability** - the provisions of these Terms are severable and if any part thereof is held to be invalid or unenforceable by any court then it will not affect the validity or enforceability of any of the remaining provisions.
- 25) **Governing Law** - Any differences arising between Opus Media Limited and the Customer concerning this Agreement or the rights and liabilities within it shall be governed by and interpreted, in all respects, in accordance with the Laws of England. The parties hereby submit to the non-exclusive jurisdiction of the English Courts.
- 26) **Third Party Rights** – a person who is not a party to any contract governed by these Terms (a 3rd Party) shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms.
- 27) **Dispute Resolution** - The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between representatives of the parties, who have authority to settle such disputes. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure.
- If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.
- 28) **Whole Agreement** – These Terms governing any contract established with the Customer together with any specific contract agreement agreed and properly executed by Opus Media Limited shall constitute the entire Agreement between Opus Media Limited and the Customer and supersede any and all prior terms whether written or oral. No modification to the Terms or any claimed waiver shall be deemed to be valid unless in writing and signed by authorised representative of Opus Media Limited.