



Terms of Business

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1. Definitions

- 1.1. These terms of business will form a binding agreement ('this Agreement') between **Client** and **Doublespark** in relation to the provision of Works.
- 1.2. In addition to the definitions set out in the Proposal the following definitions shall apply:

'Intellectual Property' means copyright, design right, database right, personality rights, image rights, patents and any rights to inventions, know-how, trade and business names, trade secrets, logos and devices, trade and service marks, moral rights and any applications thereof and all rights in confidential information whether such rights are registered or unregistered worldwide;

'Proposal' means the proposal set out in the letter above.

'Doublespark' means Doublespark Limited of 1 College Gardens, March, Cambridgeshire, PE15 8LF.

2. Operative Provision

In consideration of the payment by **Client** to **Doublespark** of the Fee in accordance with the Payment, Invoice and Direct Debit Terms, and other terms of this Agreement, **Doublespark** hereby agrees to provide the Works to Client by the Delivery Date(s).

3. The Estimate(s)

- 3.1. **Client** shall be responsible for ensuring the accuracy of the Works and for giving **Doublespark** the Client Content and any other necessary information relating to the Works within a sufficient time to enable **Doublespark** to provide the Works by the Delivery Date(s).
- 3.2. The description of the Works shall be as set out in the Estimate(s) accepted by **Client**. All dimensions, measurements and specifications for the Works and samples of the materials used for the Works outlined in the Estimate or shown to **Client** prior to placing of an order shall

be approximate only and **Client** may not reject the Works if they do not match the Estimate exactly.

- 3.3. **Doublespark** reserves the right to make changes to the specification of the Works as are required to conform with any applicable safety or other statutory requirements which do not materially affect the quality of the Works.
- 3.4. **Doublespark** charges on time charge basis and the Fee quoted shall be an estimate only. Where no fee has been quoted (or the quoted fee is no longer valid) the Fee shall be calculated on time charge basis in accordance with **Doublespark's** usual hourly charges. All Fees quoted are valid for 30 days only unless otherwise stated by **Doublespark**.

4. The Fee

- 4.1. **Client** shall be responsible for ensuring the accuracy of the Works and for giving **Doublespark** the Client Content and any other necessary information relating to the Works within a sufficient time to enable **Doublespark** to provide the Works by the Delivery Date(s).
- 4.2. The description of the Works shall be as set out in the Estimate(s) accepted by **Client**. All dimensions, measurements and specifications for the Works and samples of the materials used for the Works outlined in the Estimate or shown to **Client** prior to placing of an order shall be approximate only and **Client** may not reject the Works if they do not match the Estimate exactly.
- 4.3. **Doublespark** reserves the right to make changes to the specification of the Works as are required to conform with any applicable safety or other statutory requirements which do not materially affect the quality of the Works.

- 4.4. **Doublespark** charges on time charge basis and the Fee quoted shall be an estimate only. Where no fee has been quoted (or the quoted fee is no longer valid) the Fee shall be calculated on time charge basis in accordance with **Doublespark's** usual hourly charges. All Fees quoted are valid for 30 days only unless otherwise stated by **Doublespark**.

5. Payment

- 5.1. **Client** shall pay the Fee in accordance with the Payment, Invoice and Direct Debit Terms. All invoices are to be paid within 30 days of the date of **Doublespark's** invoice.
- 5.2. If **Client** fails to pay any instalment of the Fee in accordance with the Payment Terms and clause 5.1, then without prejudice to any other rights or remedy available to **Doublespark**, **Doublespark** shall be entitled to cancel this Agreement (or part thereof) or suspend the delivery of the Works to **Client**. **Doublespark** shall also be entitled to charge **Client** interest at the rate of four 4% per annum above the base rate of the Bank of England from time to time, until payment in full is made. **Doublespark** shall be entitled to enter into **Client's** premises in order to remove the Works (when already delivered) to which such Fee relates.
- 5.3. The Fee shall be paid by a cheque addressed to 'Doublespark' or by another payment method authorised by **Doublespark** from time to time.

6. Risk and Title

- 6.1. Risk of damage to or loss of the Works shall pass to **Client** at the time of delivery or, if **Client** wrongfully fails to take delivery of the Works, the time when **Doublespark** has tendered delivery of the Works and **Client** shall be liable to insure the Works from the date of delivery until title has passed to **Client**.
- 6.2. Risk of damage or loss of the **Client** Content or any other property owned by **Client** shall remain at **Client's** risk and is **Client's** liability at all times.
- 6.3. Until the Fee and any other sums outstanding from **Client** to **Doublespark** shall have been paid or satisfied in full (and if by cheque, then only by clearance), title

to the Works remains vested in **Doublespark** (notwithstanding delivery and of the same and the passing of the risk to **Client** therein).

7. Delivery

- 7.1. The Delivery Date(s) is an approximate estimate only and **Doublespark** shall not be liable for any reasonable delay in delivery of the Works howsoever caused.
- 7.2. Where the Works are to be delivered by instalments, each delivery shall constitute a separate contract and failure to deliver any instalment in accordance with this Agreement or any claim by **Client** in respect of any instalment shall not entitle **Client** to treat this Agreement as a whole as repudiated.
- 7.3. Any claim for non-delivery of the Works should be notified to **Doublespark** in writing within 5 days of the date of **Doublespark's** invoice. Any claim for delivery of damaged Works should be notified to **Doublespark** within 5 days of the Delivery Date(s).

8. Obligations

- 8.1. The **Client** agrees and undertakes to:
- 8.1.1. pay the Fee in accordance with the Payment, Invoice and Direct Debit Terms, clause 5 and other terms of this Agreement.
- 8.1.2. co-operate with **Doublespark** and keep **Doublespark** informed of **Client's** address and other contact details;
- 8.1.3. inform **Doublespark** forthwith of any complaint or concern by **Client** or a third party relating to the Works or any other issue or material relating to this Agreement or **Doublespark**; and
- 8.1.4. provide **Doublespark** with the **Client** Content and such other information and documentation as is required to enable **Doublespark** to carry out its obligations hereunder and ensure that the **Client** Content and other information is in a suitable form to be used by **Doublespark**. Failure to

comply with this clause 8.1.4 may cause additional Fees or delay in the Delivery Date(s).

8.2. **Doublespark** agrees and undertakes to:

- 8.2.1. use its best efforts to ensure that the Works designed by Doublespark shall not infringe third parties' Intellectual Property.
- 8.2.2. use reasonable skill and care in ensuring that the quality of the Works is satisfactorily and corresponds with the Proposal;
- 8.2.3. ensure that Doublespark has taken reasonable precautions to confirm that all information provided by Doublespark is correct and complete;
- 8.2.4. give **Client** reasonable notice of any changes to the Works, the Fee or any other detail set out in the Proposal or this Agreement; and
- 8.2.5. act dutifully and in good faith towards **Client**.

9. Rights

- 9.1. **Doublespark** hereby grants **Client** a non-exclusive licence to use the Intellectual Property in the Works for the Purpose worldwide but other than that **Client** shall not acquire any proprietary right, title or interest in the Intellectual Property in the Works provided by **Doublespark** (except the Client Content which belongs to Client).
- 9.2. **Client** is not entitled to sub-licence the Intellectual Property to any third party.
- 9.3. Excluding the rights granted to Client under the licence under clause 9.1, Client undertakes not to:
 - 9.3.1. claim any proprietary right, title or interest in or to any Intellectual Property in the Works provided by **Doublespark**, including **Doublespark's** trading names or trade marks, nor attack the validity of any such rights;

- 9.3.2. register or trade using any trade mark, device or logo used by **Doublespark** to identify its goods and services including the mark "Doublespark" or any name, mark, device or logo as is colourably or confusingly similar;
- 9.3.3. use the Works or parts of them (excluding the Client Content) in any other form than that provided to **Client** by **Doublespark** without **Doublespark's** consent.
- 9.3.4. use **Doublespark's** name or trade marks in **Client's** business whether for promotional, advertising or other purposes without **Doublespark's** prior written consent.
- 9.4. **Doublespark** undertakes not to claim any proprietary right, title or interest in or to any Intellectual Property of Client in the Client Content, nor infringe or attack the validity of any such rights. **Doublespark** is entitled to use the Client Content in the production of the Works and as allowed under the terms of this Agreement. The risk and title in the Client Content shall remain with **Client** at all times.
- 9.5. **Doublespark** retains the right to use the Works and Client Content as promotional material and in **Doublespark's** company literature whether in printed or electronic form.
- 9.6. **Client** shall ensure that any reference to the Works or images of the Works featured in any publications shall be accompanied with a reference to **Doublespark** as the designer and provider of the Works.
- 9.7. Any Intellectual Property in works created by third parties as part of the Works shall remain the property of such third parties and **Client's** right to use such third party works shall be limited to use for the Purpose only unless stated otherwise in the Proposal.

10. Liability

- 10.1. In no circumstance shall **Doublespark** be liable, in contract, tort or otherwise whatever the cause thereof (i) for any loss of profit, business, contracts, revenue or anticipated savings or (ii) for any special indirect or consequential damage of any nature whatsoever. If **Doublespark** fails to deliver the Works for any reason other than any cause beyond its reasonable control or **Client's** fault and **Doublespark** is found to be liable, **Doublespark's** liability shall be limited to delivering or redelivering the Works.
- 10.2. While **Doublespark** ensures SEO (Search Engine Optimisation) practices that fully comply with Google, and all other search engine guidelines and utilises the latest SEO practices, the **Client** acknowledges that each specific Search Engine is responsible for maintaining the ordering and placement of its index. **Doublespark** makes no warranty, express, implied or statutory, with respect to the guarantee of SEO works and neither owns nor governs the actions of any search engine. Under no circumstance shall **Doublespark** be liable for irregular fluctuations in the relative competitiveness of some search terms, recurring changes in the search engine algorithms and other competitive factors. The **Client** acknowledges that it is impossible to guarantee number one rankings or consistent top ten rankings, or any other specific rankings for any particular search term.
- 10.3. When representations, instructions or advice are given or received orally by **Doublespark**, **Doublespark** shall have no liability to **Client** for any misunderstanding or misrepresentation which may arise in relation thereto except where such is fraudulent or reckless.
- 10.4. **Doublespark** shall not be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen contingency beyond **Doublespark's** reasonable control including and without limitation fire, flood, industrial action, act of terrorism or act of God.
- 10.5. Nothing in this Agreement shall operate or be construed to operate so as to exclude or restrict the liability of **Doublespark** for death or personal injury caused by reason of the negligence of **Doublespark**.
- 10.6. **Client** agrees that **Doublespark** may use third parties to manufacture, produce and deliver the Works or parts of them. **Doublespark** shall exercise reasonable skill and care in selecting such third parties but accepts no liability in relation to claims brought by others in relation to the work done by third parties.
- 10.7. **Doublespark** shall not be liable for any accidental damage caused to **Client's** property (whether by **Doublespark** or any person engaged by **Doublespark**) and it is **Client's** responsibility to ensure that it has adequate insurance cover for such situations.
- 10.8. **Doublespark** shall make every reasonable effort to match colour samples provided by **Client**. In the absence of colour guides colours shall be balanced at the discretion of **Doublespark**.
- 10.9. In the absence of detailed instructions or **Client** being unavailable to give instructions at any given time **Doublespark** shall be entitled to use its discretion.
- 10.10. **Doublespark** shall use reasonable efforts to pass on the benefit of any manufacturer's warranty or guarantee and **Client** agrees and undertakes to proceed under such manufacturer's warranty or guarantee in the event that it is in any way dissatisfied with the Works and such dissatisfaction is not due to the default of **Doublespark**. In the event that **Client's** dissatisfaction is due to the default of **Doublespark**, **Doublespark** shall free of charge (at **Doublespark's** sole discretion) repair or replace the faulty Works or provide a refund or credit note to the value of Fee for such defective Works if such defects in **Doublespark's** reasonable opinion arise through faulty design, workmanship or materials.
- 10.11. **Doublespark** shall make every reasonable effort to maintain high standards of film processing, camera equipment and protection of digital photographic files but damage flowing from film processing, photo shoot camera

failure and digital file corruption of photographic files is limited to **Doublespark** replacing equivalent unexposed film where used and redelivering the Works. **Doublespark** shall not be liable in any amount for the expenses of redelivering such as location fees etc.

- 10.12. **Doublespark** shall not be liable for any damage or defects to the Works caused by **Client** by not following instructions issued by **Doublespark** in relation to the care, upkeep and maintenance of the Works.
- 10.13. Whilst every effort is made to ensure that electronic files are free from viruses, **Doublespark** shall accept no liability for any viruses in the Works provided in electronic format.
- 10.14. **Doublespark** shall not be liable for the Client Content and **Client** is solely responsible for the accuracy of such material, which should not breach third parties' Intellectual Property. **Client** shall indemnify **Doublespark** against all actions, claims, losses and damages incurred by **Doublespark** due to the Client Content incorporated in the Works.
- 10.15. **Doublespark** may provide proofs to **Client** before delivery of the Works for **Client's** comment and approval. **Doublespark** shall take every reasonable precaution to ensure that the proofs are accurate and correct. **Client** shall be solely responsible for the approval of such proofs and **Doublespark** excludes its liability for any errors or mistakes in the Works proofed by **Client**.

11. Rights

11.1. **Doublespark** and **Client** agree to:

- 11.1.1. Keep confidential all information (written or oral) concerning the business and affairs of the other party that **Doublespark** or **Client** shall have obtained or received as a result of discussions leading up to or the entering into or performance of this Agreement (the 'Information');
- 11.1.2. Not without the other party's written consent to disclose the

Information in whole or in part to any other person save those of its personnel and representatives involved in the business of **Doublespark** or **Client**; and

- 11.1.3. Use the Information solely for the purposes of the Programme or in order to benefit from the Programme in accordance with the terms of this Agreement.
- 11.2. The provisions of clause 10.1 above shall not apply to the whole or any part of the Information to the extent that it is:
- 11.2.1. trivial or obvious;
- 11.2.2. already in the other party's possession other than as a result of a breach of this clause;
- 11.2.3. in the public domain; or
- 11.2.4. required to be disclosed by law.
- 11.3. Excluding the rights granted to **Client** under the licence under clause 9.1, **Client** undertakes not to:

12. Duration and Termination

- 12.1. This Agreement shall come into force on the date **Client** confirms its instructions to **Doublespark** and, subject to as provided in this clause 12, shall continue in force until the Fee has been paid by **Client** in full and **Doublespark** has delivered the Works to **Client**.
- 12.2. Save as otherwise provided herein, this Agreement may be terminated forthwith by **Doublespark** or **Client** if the other party:
- 12.2.1. commits any material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 10 days of a written request to remedy the same; or
- 12.2.2. shall convene a meeting of its creditors or a proposal shall be made for a voluntary arrangement or a proposal for any other composition scheme or arrangement with its creditors or the other party shall be unable to pay its debts or if

found guilty of trading fraudulently.

- 12.3. Any termination of this Agreement pursuant to this clause 12 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.4. Upon termination of this Agreement by **Doublespark**, **Doublespark** shall be entitled to immediately and without notice to **Client** not to perform any obligations arising under the terms of this Agreement and **Doublespark** is entitled to the Fee and other payments due from **Client** to **Doublespark** under the terms of this Agreement.
- 12.5. Client Content and other material relating to the Works may be destroyed by **Doublespark** after termination of this Agreement unless the parties have agreed otherwise in writing.

13. Assignment and Successors

- 13.1. **Client** shall not be entitled to assign this Agreement nor any rights and/or obligations hereunder without the prior written consent of **Doublespark**, such consent not to be unreasonably withheld. For the avoidance of doubt **Doublespark** shall be entitled to assign this Agreement to a third party where such an assignment is reasonable.
- 13.2. This Agreement shall be binding upon and endure for the benefit of the successors in title of the parties hereto.

14. General

- 14.1. This Agreement sets out the entire understanding between **Doublespark** and **Client** with respect to its subject matter and supersedes all prior terms or conditions of contract and non-fraudulent representations, arrangements and understandings between the parties relating thereto.

- 14.2. Nothing in these terms shall be deemed to constitute a partnership or agency relationship between **Doublespark** and **Client** and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.
- 14.3. If at any time any part of this Agreement is or becomes unenforceable, such part will be construed as far as possible to reflect the parties' intentions and the remainder of the provisions will remain in full force and effect.
- 14.4. No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of this Agreement.
- 14.5. No person who is not a party to this Agreement shall be entitled to enforce any of the terms pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 14.6. This Agreement is made and shall be construed in accordance with the laws of England and the Parties submit to the non-exclusive jurisdiction of the English courts.

15.