

# SCOOP & SPOON

VIENNA LONDON GRAZ PRISHTINA MUNICH

London, 2 May 2016

## General Terms and Conditions for the Development of Marketing Materials

### 1. Definition, scope and validity

**1.1)** SCOOP & SPOON Limited with its registered office at 27 Soho Square, London W1D 3AY, Companies Register number 7932629, UID No.: GB132103966, is hereinafter referred to as the Contractor.

**1.2)** The Client is a customer of SCOOP & SPOON Limited that has entered into a contractual relationship with the Contractor for the development of marketing materials.

**1.3)** The current version of the General Terms and Conditions of SCOOP & SPOON Limited apply to the provision of services where the specification of said services makes express reference to these General Terms and Conditions or where no other General Terms and Conditions have been agreed.

**1.4)** The scope and deadlines for the contractual provision of services and level of corresponding remuneration are stated in the relevant quote (individual contract).

**1.5)** Regulations to the contrary are only valid where SCOOP & SPOON Limited has expressly agreed this in writing (individual agreement).

**1.6)** The contractual relationship between the Client and the Contractor comes into existence when the contractor is appointed once the quote that has been prepared by SCOOP & SPOON Limited is signed.

### 2. Service provision by the contractor

On the basis of the brief, the Contractor creates the contractual subject-matter in the following three phases:

#### 2.1) Design phase

In the design phase, a text-based and/or graphic basic concept is produced based from the brief provided by the Client. The design concept includes presenting the creative idea in the form of a description, sketches or mood boards. Implementation of individual advertising materials is presented as a layout to the required scale. The layout is realised using low-resolution images and example text.

A maximum of three different layout styles will be made available, and an amendments phase is included in the agreed price. Any additional options required by the Client are invoiced separately at cost.

Based on the proposals taken up, the time required for the next stage (development and production) of the contractual subject-matter (delivery period) and the bindingly agreed

fee for the entire project are determined. This may entail deviations from the scope of the contractual performance stated in the quote, which may give rise to new or unmentioned requirements. Likewise, the price and/or delivery period may change. Should this be the case, an exceptional modification to the quote will be made in consultation, or the right or termination referred to in Clause 10 may be exercised.

Clause 4 of these General Terms and Conditions applies to acceptance.

The costs of the design phase account for 50% of the quote price.

#### 2.2) Development phase

In this phase, the draft layouts approved by the Client are produced with graphics and text (e.g. preparation of printed materials). Development comprises the detailed drafting of advertising materials and preparation for production. The content required for implementation is supplied by the Client. In this phase, two proofing stages are included in the price. All amendments are submitted to the Client as a single version. Any additional amendments required by the Client are invoiced separately at cost.

Acceptance is by a person appointed and authorised by the client. Clause 4 of these General Terms and Conditions applies to acceptance.

Pursuant to Clause 2.1., design phase costs account for 50% of the bindingly agreed fee.

#### 2.3) Production phase

The advertising materials are produced in this phase (e.g. print and radio). The Contractor is responsible for coordinating production. Third party suppliers are selected and commissioned with the client, and these production costs are the basis for calculating the Contractor's coordination fee. Acceptance takes place in agreement with the Client.

Clause 4 of these General Terms and Conditions applies to acceptance.

Coordination fees for the production phase account for 20% of the producer's quote price.

### 3. Duties and obligations of the client

**3.1)** In addition to the specification to be jointly prepared, the Client provides all information and content that needs to be used by the Contractor for the subject-matter of the agreement, including the relevant test data, graphics and images.

# SCOOP & SPOON

VIENNA LONDON GRAZ PRISHTINA MUNICH

London, 2 May 2016

**3.2)** Content is provided by the Client for subsequent processing by the Contractor exclusively in electronic form and in a form that the Contractor is able to use.

If any content that is supplied provided contains errors or is incomplete, causing unplanned and/or extra work for the Contractor, any extra work will be invoiced to the Client at the Contractor's current hourly rate and is to be paid in a timely fashion.

**3.3)** The Client gives assurance to the Contractor that all content may be used and developed freely. The Client gives the specific assurance that they are in possession of all the required copyrights, including editing rights. The Client indemnifies the Contractor against any claims by third parties based on the content provided by the Client.

**3.4)** The Client has to notify the Contractor about any legal requirements (such as E-Commerce laws, data protection laws, price indication laws, etc.) before the start of the project, insofar as those requirements have legal relevance concerning the project implementation and fulfilment of the contractual subject-matter. The Contractor will try to notify the Client about generally known, internet-related legal requirements, which could be relevant for the project. However, he has no obligation to notify of or check these legal requirements and/or their legally compliant implementation. The Contractor advises the Client to consider proper legal advice.

## 4. Acceptance and Change Requests

**4.1)** Within two weeks of procurement, the client should nominate a single person authorized for the final acceptance. If this is not the case, the contract's signatory becomes authorized for acceptance.

**4.2)** The client shall undertake a close examination of both partial or individual output presented by the contractor as part of the acceptance process within two weeks after its submission.

**4.3)** If the respective partial or individual output does not conform to the current agreements, the client will immediately – that is to say no later than two weeks after the submission for examination – inform the contractor in writing of these deficiencies.

**4.4)** In the case of severe deficiencies, the contractor will correct these deficiencies within a mutually agreed period of time. The contractor will then resubmit the work for another examination. The final acceptance may only be delayed by established, reproducible and at the same time severe deficiencies. These deficiencies, along with their verifiability and reproducibility, are to be protocolled by the client in a written form and forwarded to the contractor.

**4.5)** In the case of minor deficiencies, the contractor will

correct these deficiencies within a mutually agreed period of time. The final acceptance will be regarded as effective once the deficiencies have been corrected. There will be no additional acceptance process.

**4.6)** If the client fails to present the contractor with a written list of deficiencies within two weeks after the initial presentation of partial or individual output, the work will be deemed to be fully accepted.

**4.7)** Change requests, especially with regard to briefing, marketing concept, text, design or any other features of the subject of agreement will immediately be analysed by the responsible project manager and evaluated with regard to possible consequences for budget, scope and time period. Should one of these three areas become subject to change, the project manager will inform the client and propose a specific solution. This may either be charged as an additional expense to the client or compensated by the reduction of the remaining project scope.

**4.8)** The contractor is free to charge an appropriate additional fee for the requested changes. The set fees are subject to necessary additional time expenses as well as the contractor's hourly rate.

## 5. Copyright

**5.1)** The Contractor is entitled to include a reference to its authorship in a suitable place on the work and in the customary form. The Client is not entitled to remove it.

**5.2)** For works produced by the Contractor within the scope of the agreement, the Contractor transfers to the Client the transferable copyright, related rights and other powers required for publication, reproduction and usage.

**5.3)** The usage rights to works provided by third parties, for example, models, figurines, images, film and sound recordings, are agreed separately with the Client in the quote (individual contract) before production begins. The agreement will specifically determine the media employed, field of application and time period. If no agreement is reached, the usage rights of the third party apply to the Client.

**5.4)** Further transfer or licensing of usage rights by the Client requires prior written agreement by the contractor in order to be effective.

**5.5)** Unless otherwise specified in the respective quotation or contract, the contractor is not required to provide the client with the respective open data files, that is, data files fit for subsequent editing by the client, that were created within the context of marketing production. If the client so wishes, the contract parties will reach a separate agreement on this matter.

# SCOOP & SPOON

VIENNA LONDON GRAZ PRISHTINA MUNICH

London, 2 May 2016

## 6. Fees

**6.1)** The parties jointly determine a provisional budget for the contractual performance stated in the quote, and this budget is specified in the quote.

This budget is specified more precisely or confirmed in the design phase as an integral part of the 'Development phase: end-result'. It is only once this step has been taken that the fee is deemed as being jointly agreed (price valid under civil law) with respect to contractual performance.

**6.2)** In addition to this fee, the Contractor is paid expenses for travelling outside Vienna, London or Graz. Should services be charged at cost, travelling time counts as working time.

**6.3)** Where the Client requires additional services or changes during the period of work, the contractor may invoice the additional work arising from this separately at the hourly rate. This rule also applies where the Client fails to comply with or is late in complying with its duty to cooperate, thereby causing additional work for the Contractor.

## 7. Methods of payment

**7.1)** The fee agreed pursuant to Clause 6.1 plus any expenses pursuant to Clause 6.2 are due for payment within 14 days of invoicing without reduction in instalments in accordance with the phases defined in Clause 2.

Instalment 1 before the start of the design phase: 50% of quote price

Instalment 2 on completion of the development phase: 50% of the agreed fee

Production phase on completion of production: 20% of third party quote price

**7.2)** The fee calculated pursuant to Clause 6.3 is due for payment without deduction within 14 days of invoicing

**7.3)** Should the Client be in default of payment, the Contractor is entitled to demand legal default interest from the time of default.

## 8. Warranty and liability

**8.1)** The Contractor is not responsible for content or data of any kind provided by the Client. The Contractor is not obliged to check content or data for possible legal infringements.

**8.2)** It is jointly agreed that for the production of online advertising materials (e.g. banners) the Contractor is required to provide contractual subject-matter that is usable and fit-for-purpose for the end devices, operating system versions and browser versions defined in the quote. It is further jointly agreed that adapting the contractual subject-

matter for any further development of devices and/or operating system versions and/or browser versions do not come under the warranty, but may be implemented by the Contractor at the request of the Client in a new project with new content and conditions to be agreed.

**8.3)** The warranty period for each end-result item runs for 12 months from acceptance thereof, and the Contractor must notify any defects in any end-result item and replicability of said defects in writing.

**8.4)** Should a third party make a claim against the Contractor for any possible legal infringements arising from the content of the contractual subject-matter, the Client undertakes to indemnify the Contractor against third parties and to compensate the contractor for any costs incurred by the latter for possible legal infringements.

**8.5)** The Contractor may be held liable for any claims for compensation made by the Client for deliberate acts and gross negligence, of which the Client is required to provide proof. It is jointly agreed that liability for minor negligence is excluded.

**8.6)** The Contractor notify the client in a timely fashion of any identifiable legal risks associated with the content or design of the prospective advertising materials. If the Contractor considers that a legal (e.g. competition law), assessment by an expert or institution is required in order to produce the materials, the Client bears the cost, subject to agreement. If the Contractor has notified their concerns and the Client still insists that the advertising materials be produced, the agency is not liable for any disadvantages or risks. The customer indemnifies the agency against third party claims on simple request.

## 9. Completion

**9.1)** The parties jointly determine a completion deadline for the contractual performance stated in the quote, and this has been stated in the quote.

**9.2)** This deadline is not binding for the Contractor where it cannot be adhered to for reasons attributable to the client. This applies especially in the event that the Client infringes its obligations pursuant to Clause 3 of these General Terms and Conditions.

**9.3)** All reports, printed materials, films and illustrations produced by the Contractor for the Client are to be properly stored without separate charge for a period of one year, starting from the end of the relevant communications campaign, and are to be issued at any point during this period at the request of the Client in the required format (e.g. PDF, JPG, MPG). Within this storage period, documents will be issued to the Client at its request or destroyed at the end of the storage period. The documents referred to above are stored in digital form.

# SCOOP & SPOON

VIENNA LONDON GRAZ PRISHTINA MUNICH

London, 2 May 2016

Any costs for compiling, sending, packing and storing data beyond the agreed period and any transport and destruction costs and related activity and insurance are borne by the Client.

**9.4)** The Contractor may destroy immediately any documents not required such as manuscripts, sketches and drafts for advertising campaigns that are not realised.

**9.5)** Data must be provided on the customary data carrier and in a form that enables the Client or its representative to use it for the purposes of updating the communications campaign contained therein.

## 10. Extraordinary termination

Either party may terminate the agreement early without a notice period with the following just cause:

**10.1)** If it becomes clear during the design or development phase (refer to Clauses 2.1 and 2.2) that the requirements of the customer cannot be met for technical, content-related or time-related reasons or cannot be met within the quote price or within the bindingly agreed fee.

**10.2)** If an application to open insolvency proceedings against the assets of one of the parties to the agreement reaches court or the conditions are in place for opening such proceedings or rejecting such an application due to lack of assets.

**10.3)** If, despite a written warning from the other party, one of the parties to the agreement repeatedly fails to comply with the provisions of the agreement.

**10.4)** For ordinary or extraordinary termination, the Client undertakes to pay any costs so far incurred for the contractual performance by the Contractor for each phase started or already completed, and with no reduction.

## 11. Naming as a reference customer

Subject to compliance with data protection and confidentiality rules, the Contractor is entitled to describe the contractual performance in a general way as a reference project, identifying the Client by name and further entitled to publish such a description. This also includes the use of trademark protected logos, product descriptions and other trademarks of the client. The Client has the right to refuse to be named as a reference customer. Any refusal must be made in writing.

## 12. Amendments and additions

Changes and additions only come into legal effect if confirmed in writing in an integral document signed by both contracting parties. This formal requirement also applies to

dispensing with the formal requirement itself.

## 13. Severability clause

Should one or more of the provisions be void or ineffective or become ineffective due to subsequent circumstances or should there be a loophole in the agreement jointly identified by both parties, the validity of the remaining provisions will remain unaffected. If this happens, the parties undertake to update the agreement with an effective provision with a legal and commercial intent corresponding to the invalid or incomplete provision.

## 14. Place of performance, place of jurisdiction and applicable law

**14.1)** The place of performance and sole place of jurisdiction for any disputes arising from the agreement is the location of the Contractor's company office.

**14.2)** The agreement is subject solely to the substantive law of England and Wales.