

TERMS and CONDITIONS of BUSINESS of Rocca Creative Thinking Limited (‘the Company’)

2020 Edition

These Terms and Conditions (“Conditions”) apply to any contract between the Company and its’ clients to the exclusion of any other terms and conditions sought to be imposed on the Company in any way.

1. Definitions

1.1 The following words have the following meanings:

- + ‘We’, ‘Us’ or ‘Our’ – the Company. ‘You’ or ‘Your’ - you, our client
- + ‘Client Materials’ – any documents, information and materials you provide to us relating to our Services
- + ‘Company Materials’ - any documents, information and materials we provide to you relating to our Services which are owned or created by, or licensed to, Us prior to the date of our contract with You and/or independent of the Services provided to You
- + ‘Deliverables’ – any output of the Services as specified in the Quotation, including the software, and any other documents, products and materials provided by Us to You in relation to the Services
- + ‘Intellectual Property Rights’ - patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements
- + ‘Interest’ - the interest rate set from time to time by the Late Payment of Commercial Debts (Interest) Act 1998 and any Regulations made under that Act
- + ‘Services’ – the services we provide either as part of the Quotation or otherwise agreed to be provided by us to you, including any Deliverables

1.2 The Quotation forms part of the contract between you and us and takes precedence over these Conditions

1.3 The Quotation is valid for 30 days from the date issued unless withdrawn by us in the interim

2. Information from you

2.1 You must promptly supply us with such accurate and complete Client Materials as we request or need to perform the Services and ensure they do not infringe any rights of any third party in any way whatsoever

2.2 You must ensure we are supplied with any necessary licences or consents to use or include all or any part of the Client Materials as part of the Services.

3. Making the contract

3.1 We will provide you with a Quotation which will be capable of acceptance to form a legally binding obligation between us as specified below

3.2 Your acceptance of our Quotation must be in one of the following ways:

3.2.1 Verbal and then written confirmation by us in an email

3.2.2 In writing (which may include an email)

3.2.3 In writing with your Purchase Order number or other reference

4. Delays and additional costs

4.1 Timescales in the Quotation are only given as an estimate; time of delivery shall not be of the essence of the contract

4.2 If, when we are providing the Services, you either fail to or delay providing us with any Client Materials or approval or sign-off then any resulting delay or direct or indirect loss suffered by you will not be our responsibility and we reserve the right to make a supplemental charge to achieve any requested shortened deadline

5. Changes to the Services

5.1 If you request changes to the scope or execution of the Services before they are complete you must request that in writing.

5.2 We will consider any such request and notify you of the additional time and cost involved which you must agree to in writing before any changes are accepted by us. Any agreed changes will then become part of the Services

6. Defects and defect period

If you have any complaint about the Services you must tell us in writing as soon as you become aware of the problem and in any case no later than 7 working days after we have completed the Services

7. Payment terms

- 7.1 Unless the Quotation says something different payment in full is required within 30 days of the date of each of our invoices. We reserve the right to require payment in full or part in advance of starting work on the Services. We also reserve the right to invoice you in weekly or monthly instalments where the indicative timescale for delivery of the Services cannot be set with any certainty
- 7.2 If completion of the Services is prevented or unreasonably delayed by a lack of or incomplete or inaccurate Client Materials then we may notify you accordingly, treat the Services as if they were complete and bill you in full
- 7.3 If you don't pay us on time or at all, we can do all, some, or some combination of the following, as we choose:
- + suspend the Services until we are paid
 - + terminate the agreement between us immediately by telling you in writing
 - + charge you Interest from the due date until we receive cleared funds from you
 - + charge you all our costs and expenses (management, administrative, legal or debt collection agency) that we spend in getting paid by you
 - + retain Intellectual Property Rights in any work we have done for you whether or not already supplied to you

8. Intellectual Property- rights and indemnities

- 8.1 We, Our suppliers and Our licensors shall retain ownership of all Intellectual Property Rights in the Company Materials, and nothing in this Contract shall grant to You any rights in the Company Materials save that:
- 8.1.1 to the extent that any Company Materials are contained within the Deliverables and subject to Your payment of all monies due to Us under these Conditions in cleared funds, We grant to You, or shall procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and use such Company Materials solely to the extent they are contained within the Deliverables and solely for the purpose of receiving and using the Services and the Deliverables for Your internal business purposes within the context agreed in the Quotation.
- 8.2 In relation to the Deliverables:
- 8.2.1 We, Our suppliers and/or Our licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Client Materials;

- 8.2.2 subject to clause 8.1 and to Your payment of all monies due to Us under these Conditions in cleared funds, We grant to You, or shall procure the direct grant to You of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and use the Deliverables (excluding the Client Materials) for the purpose of receiving and using the Services and the Deliverables for Your internal business purposes within the context agreed in the Quotation;
- 8.2.3 You must not sell, re-sell, sub-license or assign any of the rights granted in clause 8.2.2 without Our prior written consent (not to be unreasonably withheld or delayed) and without payment of any additional charges that We may require in consideration for the granting of such additional rights; and
- 8.2.4 save as permitted in this clause 8, You must not, and You must not permit any other person to:
 - (a) copy, alter, modify, reproduce, reverse assemble, reverse compile or enhance the Deliverables;
 - (b) alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidential, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Deliverables;
 - (c) make any of the Deliverables available to any person other than Your employees without Our prior written consent (not to be unreasonably withheld or delayed); or
 - (d) do any act that would or might invalidate or be inconsistent with Our Intellectual Property Rights.
- 8.3 In relation to the Client Materials, You:
 - 8.3.1 and Your licensors shall retain ownership of all Intellectual Property Rights in the Client Materials; and
 - 8.3.2 grant to Us a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify the Client Materials for the term of this Contract for the purpose of providing the Services to You.
- 8.4 You:
 - 8.4.1 warrant that the receipt and use of the Client Materials in accordance with these Conditions by Us, Our agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party;
 - 8.4.2 shall indemnify Us in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Us arising out of or in connection with any claim brought against Us, Our agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt or use in accordance with these Conditions of the Client Materials; and

8.4.3 shall immediately notify us of any actual, threatened or suspected infringement of any Intellectual Property Rights and of any claim by any third party that any use of the Deliverables infringes any rights of any other person, as soon as that infringement or claim comes to Your attention.

9. Publicity

We reserve the right to refer to the Services in any of our sales / promotional materials

10. Exclusion and limit of liability

- 10.1 We do not accept any liability (however arising or foreseeable) for any indirect, special or consequential loss of any kind including loss of actual or anticipated profits, loss of business opportunity, loss of anticipated savings or loss of goodwill resulting from the Services
- 10.2 Our total liability for direct losses arising from any breach of contract or (subject as below) negligence will be limited to a maximum of the price of the Services
- 10.3 Nothing in these Conditions is intended to exclude or restrict our liability for death or personal injury resulting from our negligence

11. Our rights of cancellation

- 11.1 We can cancel any agreement between you and us if we reasonably believe it has become impossible, or unreasonable to complete on the terms originally agreed
- 11.2 If we do cancel then you will pay us for that part of the Services completed up to the point of cancellation

12. Termination

- 12.1 Without prejudice to any other rights or remedies which the parties may have either party may immediately terminate the agreement for the Services (without liability to the other) on giving written notice if:
 - 12.1.1 one party reasonably believes that the other party is insolvent
 - 12.1.2 the other party ceases or threatens to cease to trade
 - 12.1.3 the other party commits a material breach of any terms of the contract and (if such breach is capable of remedy) fails to remedy that breach within 14 days of being notified in writing of the breach
- 12.2 On termination of the agreement for any reason you will immediately pay to us all outstanding invoices and Interest in respect of the Services supplied together with any invoice for work completed by us whether or not that work has been supplied or invoiced to you

13. Non Solicitation of Staff

For a period of six calendar months after the Services have been supplied or the agreement terminated you will not or attempt to directly or indirectly solicit or entice away or employ or engage any employee or sub-contractor engaged in negotiating or supplying the Services or any part of them

14. Warranty

14.1 We warrant that the Services will be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

14.2 Without prejudice to Clause 14.1, and except as expressly stated in these terms, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded in relation to the Services

15. Subcontracting

We reserve the right to sub-contract all or any part of the Services as we deem necessary and such sub-contracting will not relieve us of our obligations under this agreement

16. Representation

You agree that you have not been persuaded to enter into any agreement with us based on anything we have said or done (except when it is recorded in the Quotation or in another written document and signed by one of our Directors).

17. No third party rights

These Conditions are not intended to create any rights in favour of a third party under the Contracts (Rights of Third Parties) Act 1999.

18. Force majeure

We are not liable for any delay in performance or failure to perform our contractual obligations to you if that delay or failure is caused by circumstances beyond our reasonable control.

19. No assignment

You are not entitled to assign or in any other way transfer your obligations to us under these Conditions

20. Severability

If any part or parts of these Conditions are held to be invalid or unenforceable by a relevant Court such finding shall not affect the enforceability of the remaining provisions

21. Waiver

The failure by either party to enforce at any time or for any period any one or more of these Conditions shall not be a waiver of them or of the right at any time subsequently to enforce any part of these Conditions

22. English law applies

English law, and the exclusive jurisdiction of the English courts, apply to any agreement made between you and us.