

STANDARD TERMS AND CONDITIONS

1. Interpretation

The following definitions and rules of interpretation apply in this Agreement.

Agreement: these Standard Terms and Conditions and the Booking Form.

Balance Payment: the Fees less the Deposit;

Booking Form: the booking form as provided by SIYE.

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Fees: the Fees payable by the Customer for the Services as set out in the Booking Form.

Customer: the customer as set out in the Booking Form.

Deposit: a non-refundable deposit equal to 55% of the total Fees.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, 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.

Location: the location or site the Services are to be performed.

Project: the project requiring the Services or the event at which the Services are to be performed as more particularly described in the Booking Form.

Services: the services to be supplied and the works to be created and delivered by SIYE to the Customer as set out in the Booking Form.

SIYE: means Sand In Your Eye Limited, a company registered in England and Wales with registered office Unit 11c, Topland Country Business Park, Cragg Vale, Hebden Bridge, HX7 5RW and company registered number 10533753.

2. Agreement

- 2.1 These Standard Terms and Conditions and the Booking Form constitute the whole agreement between the Customer and SIYE. If there is an inconsistency between the provisions of these Standard Terms and Conditions and the Booking Form, the provisions of the Booking Form shall prevail.

- 2.2 Where SIYE send the Customer the completed Booking Form, this constitutes an offer by SIYE to provide the Services to the Customer upon the terms of the Agreement (“**Offer**”).
- 2.3 The Offer shall be valid for a period of 7 days from receipt by the Customer of the Booking Form (“**Acceptance Period**”).
- 2.4 Subject to the provisions of clause 2.6, the Offer shall be accepted when the Customer signs and returns (by email or post) the Booking Form to SIYE before the expiry of the Acceptance Period, and the Agreement shall commence on the date upon which the Booking Form is countersigned by SIYE.
- 2.5 The Customer shall pay the Deposit to SIYE (by electronic transfer) on receipt of SIYE’s invoice.
- 2.6 If the Customer fails to sign and return the Booking Form within the Acceptance Period but requests SIYE to perform the Services, the Agreement shall commence the earlier of (a) the date the Customer confirms acceptance of the Booking Form by signing and returning it to SIYE or (b) the date of commencement of provision of the Services to the Customer.

3. Services

- 3.1 SIYE shall only perform the Services in accordance with this Agreement.
- 3.2 SIYE reserves the right to:
- (a) not hold the specified dates for SIYE’s performance of the Services as set out in the Booking Form; or
 - (b) not perform the Services,
- if the Deposit has not been paid by the Customer in accordance with clause 2.5.
- 3.3 SIYE shall use its reasonable endeavours to meet any dates specified in the Booking Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.4 SIYE reserves the right to amend the Booking Form if necessary to comply with any applicable law, regulatory requirement, directions from authorities or governmental bodies or if the amendment will not materially affect the nature or quality of the Services. SIYE shall notify the Customer in any such event.
- 3.5 SIYE does not guarantee or provide any warranty that the results of the Services, sculptures or carvings will last for a particular length of time.

4. Customer's obligations

4.1 The Customer shall:

- (a) provide all assistance reasonably requested by SIYE to enable SIYE to deliver the Services;
- (b) provide SIYE, its employees, agents, consultants and subcontractors, with access to the Customer's premises, the Location and other facilities as reasonably required by SIYE;
- (c) obtain and maintain all necessary licences, permissions and consents which may be required for the performance of this Agreement before the start of the Project;
- (d) comply with all applicable laws, including health and safety laws;
- (e) keep all materials, equipment, documents and other property of SIYE at the Customer's premises and Location in safe custody at the Customer's risk;
- (f) comply with any additional obligations as set out in the Booking Form; and
- (g) act in accordance with any reasonable instruction of SIYE.

5. Fees and payment

5.1 Subject to clause 8.2, the Deposit is not refundable and is to be paid by the Customer in accordance with clause 2.5.

5.2 SIYE shall invoice for the Balance Payment on or around the completion of the Project. The Customer shall pay each balance invoice submitted by SIYE within 30 days of the date of the invoice and time for payment shall be of the essence of the Agreement.

5.3 SIYE shall be entitled to claim interest on the late payment of any amount properly due to SIYE under this Agreement accruing on a daily basis from the due date for payment until payment is made in full, both before and after any judgment, at a rate equal to the rate of statutory interest prescribed for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time.

6. Intellectual property rights

6.1 Nothing in this Agreement shall assign or transfer to the other party any Intellectual Property Rights owned by one party (or its third parties) which are in existence at the effective date of this Agreement and the use of which is needed for performing the Services.

6.2 Subject to clause 6.1, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by SIYE, including the results of the Services that are

capable of ownership and techniques, ideas, technology or methodologies employed by SIYE.

- 6.3 The Customer shall be responsible for obtaining and maintaining all licences and permissions necessary for the use by SIYE of the artworks and materials required to perform the Services. The Customer shall indemnify and hold harmless SIYE against all losses and third party claims that use of such artworks and materials provided by the Customer infringe third party Intellectual Property Rights.
- 6.4 SIYE grants to the Customer a non-exclusive non-sub-licensable non-transferrable licence during the term of the Project to modify carvings, sculptures or works for the purpose of receiving and using the Services for the Project.
- 6.5 The Customer grants SIYE a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to SIYE for the purpose of promoting the Project and providing the Services.
- 6.6 The Customer may make or procure images, video or other recordings of the Services during the Project ("**Images**") but:
 - (a) save for the purposes of marketing the Project, the Images must not be used for commercial purposes without the prior written consent of SIYE; and
 - (b) SIYE must be credited as the creator of the Services in all press releases, marketing or other media where reasonable practicable and such credit shall not be less than equal to any other third parties engaged by the Customer for the Project.

The Customer shall not and ensure the Images shall not capture detailed images of the methods, techniques and technology used by SIYE in the performance of the Services.

- 6.7 The Customer grants to SIYE a non-exclusive irrevocable license to use the Images.

7. Limitation of liability

- 7.1 The Customer must obtain and maintain its own insurance for operating the Project, for engaging SIYE and against all risks associated with the performance of the Services by SIYE at the Project.
- 7.2 Subject to clauses 7.3 and 7.4, SIYE's total liability, including liability for contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Agreement to the Customer shall not exceed a sum equal to the Fees.

- 7.3 SIYE shall have no liability to the Customer, whether arising in contract, tort (including negligence), breach of statutory duty or restitution, or for misrepresentation, or otherwise howsoever, for any loss of profit, loss of business, depletion of goodwill or any indirect or consequential loss whatsoever arising out of or in connection with the Agreement.
- 7.4 SIYE shall not be liable for any delay or failure to perform the Services if such delay or failure arises or is in connection with any breach of this Agreement by the Customer or any act or omission of the Customer.
- 7.5 The Customer acknowledges that SIYE procures materials from third parties and that unless expressly otherwise stated in the signed Booking Form SIYE will not have tested such materials and so agrees that SIYE shall not be liable to the Customer if such materials are not up to the Customer's required standard.

8. Termination

- 8.1 The Customer may terminate the Agreement by giving written notice to SIYE. If the Customer terminates:
- (a) up to 4 weeks before the Project start date, the Customer must pay to SIYE the total fee;
 - (b) up to 6 weeks before the Project start date, the Customer must pay to SIYE 75% of the total fee; and
 - (c) more than 6 weeks before the Project start date, the Customer must pay to SIYE a sum equal to the costs and expenses incurred by SIYE in the preparation and performance of the Services to the extent such costs and expenses exceed the value of the Deposit.
- 8.2 Without affecting any other right or remedy available to it, SIYE may terminate the Agreement at any time on written notice. If SIYE terminates the Agreement before the commencement of the Services, other than in accordance with clauses 8.3 and 8.4, SIYE shall return the Deposit (less any non-recoverable costs incurred by SIYE).
- 8.3 If before or during the Project SIYE determines that the weather is too adverse to perform the Services or that such weather will compromise the Services, SIYE may suspend performance of the Services. In such event, the Balance Payment must be paid and, if appropriate, the parties will agree a new date to perform the outstanding Services. SIYE reserves the right to charge an additional fee for rescheduling.
- 8.4 Without affecting any other right or remedy available to it, SIYE may terminate this Agreement or suspend the performance of the Services if the Customer fails to pay any amount due under the Agreement on the due date for payment.

- 8.5 Either party may terminate this Agreement with immediate effect on giving notice to the other party if:
- (a) the other party commits a material breach of any other term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so; or
 - (b) other party is declared insolvent or bankrupt, or makes an assignment for the benefit of creditors, or a receiver is appointed over all or substantial part of its assets, or suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 8.6 Clauses 5, 6, 7, 8 and 9 shall survive termination of this Agreement.
- 8.7 Following termination of this Agreement the Customer shall upon the demand of SIYE:
- (a) pay to SIYE all unpaid invoices or other monies payable, whether invoiced or not and including all interest;
 - (b) return originals and copies of confidential information disclosed to the Customer by or on behalf of SIYE and to the extent possible, erase any such confidential information from its computer systems; and
 - (c) return all SIYE's intellectual property materials, equipment or other materials in the possession of the Customer.

9. Confidentiality

- 9.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 9.2.
- 9.2 Each party may disclose the other party's confidential information provided such persons are notified of the confidential nature of the information disclosed:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 9;
 - (b) any member of the group of companies to which the other party belongs; and
 - (c) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3 No party shall use or allow any person to use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

10. General

10.1 Neither party shall be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control, including adverse weather, fire, casualty, accident, epidemic or pandemic, riot, war, act of God, strike, lockout, labour conditions, judicial order, enactment or the incapacity, illness or death of a leading SIYE artist, producer, director or any leading technician of the Services.

10.2 SIYE may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.

10.3 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

10.4 This Agreement constitutes the entire agreement and understanding of the parties and supersedes and extinguishes all previous drafts, agreements and understandings between them, whether oral or in writing, relating to its subject matter. Each party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance, warranty or understanding made by or on behalf of a party (whether made innocently or negligently) which is not expressly set out in this Agreement. Neither party shall have any claim for innocent or negligent misrepresentation based upon any statement, representation, assurance or warranty in this Agreement.

10.5 No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post at its registered office (if a company) or its principal place of business (in any other case) or by e-mail.

10.7 Any notice shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
 - (c) if sent by email, at 9.00 am on the next Business Day after transmission.
- 10.8 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.9 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 10.10 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party or authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 10.11 This Agreement is governed by the laws of England and Wales and the parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).