

## **REVENANT**

**(Revenant is a Trading Name of Playdead Ltd.)**

### **Terms and Conditions of Business**

#### **Definitions**

1. In these conditions, the following terms shall have the following meanings:

**'Revenant'** means PLAYDEAD LTD. T/A REVENANT of Arch 24 (Unit 13), Eastvale Place, Glasgow, G3 8QG upon whose document these conditions are endorsed.

**'the Customer'** means the person, firm, company or other body to whom such document is addressed.

**'these conditions'** means these conditions of business; and

**'the contract'** means the contract to which these conditions apply and which incorporates

these conditions.

#### **2. Formation of Contract**

2.1 All goods, services or facilities are offered and all contracts are entered into subject to the following conditions of business. Subject always to condition 15.4 all other terms, conditions or warranties whatsoever are, to the maximum extent permitted by law, excluded from the contract or any variation thereof unless expressly accepted by REVENANT in writing. No servant or agent of REVENANT has the power to vary these conditions orally or to make any statement or representation about the goods, services or facilities offered, their fitness for any purpose or any other matter whatsoever.

2.2 These conditions shall be incorporated into any contract between REVENANT and the Customer to the exclusion of any terms or conditions stipulated or referred to by the Customer. Any dealings with REVENANT following receipt by the Customer of notice of these conditions shall automatically be deemed acceptance thereof notwithstanding the absence of formal acknowledgement.

2.3 Unless otherwise expressly stated in writing, all quotations and estimates supplied by REVENANT are invitations to treat. The Customer's order is an offer and shall become binding upon acceptance by REVENANT.

2.4 These terms supersede all previous conditions and override any alternative conditions stipulated or referred to by the Customer

#### **3. Prices**

3.1 All prices quoted or estimated are exclusive of VAT, all media stock, courier and delivery charges, currency fluctuations, meals and long distance telecommunications expenses or any other exclusions from the estimate/quote supplied. REVENANT shall further be entitled to make an adjustment to the quoted or estimated price in the event that:-

3.1.1 additional costs are incurred by REVENANT due to materials supplied by the Customer or any third party being in the opinion of REVENANT, in any way defective, in an unsuitable format (or a different format to that which REVENANT is expecting to receive the same) or of unsuitable quality for normal processing; or

3.1.2 the information supplied by the Customer or any third party in connection with its order does not provide a full and accurate indication of the work involved; or

3.1.3 additional costs are incurred by REVENANT, due to alterations or additions by the Customer or any third party in its requirements.

3.1.4 additional costs are incurred by REVENANT due to exceptional circumstances outside the control of REVENANT, including currency fluctuations and changes in third party costs.

3.1.5 additional services or items are requested or required which are part of the noted exclusions listed with the quoted or estimated cost.

3.1.6 REVENANT reserves the right to change the rates quoted in the rate card at any time without prior notice, or by specific written agreement with the customer to agree to charge rates different from those specified in the rate card in respect of a specific Booking.

3.1.7 The Customer's order is an offer and shall become binding only upon REVENANT' acceptance.

#### **4. Performance, Delivery or Collection**

4.1 Unless otherwise agreed in writing, all times quoted for performance or delivery or availability for collection or prices estimated/quoted are given in good faith but are not guaranteed.

Notwithstanding that REVENANT and the Customer may have agreed that time is of the essence, the time for performance or delivery or availability for collection shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alteration by the Customer of its requirements may result in delay in performance, delivery or availability for collection. REVENANT shall not be responsible for any costs, charges or expenses incurred by the Customer as a result of such failure or delay.

4.2 Any packaging supplied by REVENANT, unless otherwise expressly agreed, is intended to provide adequate protection throughout normal conditions of transport by the means specified in the contract or as may be otherwise agreed. If the Customer (or the intended recipient) fails to take delivery on the agreed delivery date or to collect on the agreed collection date or, if no specific delivery or collection date has been agreed, when the goods are ready for despatch, REVENANT shall be entitled to store the goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition 5. Notwithstanding the terms of condition 7.1 below, REVENANT shall be under no liability in respect of any loss or damage following the despatch of any goods from REVENANT' premises.

4.3 If REVENANT and the Customer shall agree that any goods shall be delivered electronically or via any form of telephony ("Direct Delivery") the following provisions shall as applicable apply:

4.3.1 the Customer acknowledges that Direct Delivery is not or may not be a completely secure medium of communication and that an unauthorised third party may intercept, tamper with or delete goods delivered by Direct Delivery and that Direct Delivery may involve reliance upon third party data carriers over which REVENANT has no control; and

4.3.2 REVENANT shall not be responsible for and shall have no liability to the Customer or any third party for:

4.3.2.1 any delay to any Direct Delivery or any non receipt of any goods delivered by Direct Delivery;

4.3.2.2 any loss or damage that results from any person gaining unauthorised access to any Direct Delivery of any goods;

4.3.2.3 use or disclosure of any data obtained by any third party as a result of the same having gained unauthorised access to any Direct Delivery; and

4.3.2.4 any loss or damage resulting from any malfunction of or the introduction of any viruses, worms, logic bombs, time locks, time bombs, Trojan horses and/or bugs to any equipment and/or software used to effect and/or receive any Direct Delivery.

## **5. Terms of Payment**

5.1 Subject to condition 5.2 and unless otherwise agreed by REVENANT in writing all invoices rendered by REVENANT are payable within 30 days of the dates thereof.

5.2 REVENANT expressly reserves the right at its sole option to require payment by instalments during the performance of the contract and/or payment of all amounts owing to REVENANT immediately prior to delivery or making goods available for collection.

5.3 The Customer shall pay all amounts owing to REVENANT in full and shall not exercise any rights of set off or counterclaim against invoices submitted. Payment of all amounts shall only be made in the currency in which they are invoiced and shall not be subject to any deductions/charges whatsoever.

5.4 In the event of default in payment by the Customer under any contract between the Customer and REVENANT shall be entitled, without prejudice to any other right or remedy, to suspend any further performance of or deliveries under any contract or contracts between REVENANT and the Customer without notice and to charge interest on any amount outstanding at the rate of 4% above the base rate of Royal Bank of England from time to time (accruing from day to day both before and after judgment), from the due date of payment to the actual date of payment.

5.5 All prices quoted or agreed are exclusive of any applicable value added tax, which the Customer shall be liable to pay in addition.

5.6 any queries regarding the invoice must be raised within 7 days of the date of the invoice.

## **6. Cancellation**

6.1 Any contract between REVENANT and the Customer may only be cancelled or varied with the written consent of REVENANT and upon the terms of these conditions. The giving of REVENANT' consent shall not in any way prejudice REVENANT' right to recover from the Customer full compensation for any loss or expense arising from such cancellation or variation.

6.2 If notwithstanding condition 6.1 and without prejudice to any other rights or remedies available to REVENANT, the Customer shall give REVENANT notice of cancellation of an order which notice is received by REVENANT:

6.2.1 less than 24 hours prior to, as applicable, the date for performance or the commencement of performance or the date on which the applicable facilities were to be utilised by or on behalf of the Customer (the "Contract Date"), REVENANT shall be entitled to charge the Customer the full contract price or, if none is stated, the applicable amount under REVENANT' rate card current at the Contract Date; and

6.2.2 less than five working days but more than 24 hours prior to the Contract Date, REVENANT shall be entitled to charge the Customer one half of the contract price or, if none is stated, one half of the applicable amount under

REVENANT' rate card current at the Contract Date in each case reflecting the fact that REVENANT is unlikely to be able to secure an order for the facilities that had been allocated to the processing of the Customer's order from a third party within the time available.

6.2.3 In its absolute discretion REVENANT reserves the right to cancel any booking or order in the event of breach of these terms and conditions by the Customer.

6.2.4 In addition to the above cancellation charges, REVENANT will be entitled to be reimbursed with any costs or expenses which it may have incurred arising from the cancellation of the Booking or Job.

## **7. Liability**

7.1 The Customer hereby agrees that without limiting any other provision of these conditions:

7.1.1 to the maximum extent permitted by law REVENANT' entire liability for breach of any provisions of the contract, or any terms, warranties or conditions implied in the contract by operation of law, including REVENANT' liability for negligence (except where such negligence results in death or personal injury) are excluded;

7.1.2 under no circumstances shall REVENANT be liable for any consequential loss whatsoever (including damages for loss of business profits, business interruption or other indirect pecuniary loss of any kind);

7.1.3 REVENANT' entire liability for any direct loss suffered by the Customer, as a result of REVENANT' breach of the contract and for which REVENANT shall notwithstanding any other provision of the contract be liable, shall (subject to the terms of conditions 4.2, 4.3 above and 9.1 below) be limited to the amount actually paid by the Customer in accordance with the contract;

7.1.4 the price to be paid by the Customer under the contract reflects the limitation on the liability accepted by REVENANT; and

7.1.5 this condition 7.1 is reasonable and necessary in the circumstances and that having regard to that fact, this condition does not work harshly or unreasonably against the Customer.

7.2 The Customer shall indemnify REVENANT from and against:-

7.2.1 all claims or proceedings taken against REVENANT by any third party including any client of the Customer, REVENANT' employees, the Customer's employees or the employees of any contractor employed by the Customer or REVENANT or the personal representatives or dependants of any such employee or other third party in respect of personal injury or damage to property caused by or arising out of any act or omission of REVENANT in the course of carrying out the specific instructions of the Customer;

7.2.2 all claims or proceedings taken against REVENANT arising out of the acts and/or omissions of the Customer, its agents or sub-contractors or any of their respective employees, whether negligent or otherwise.

7.3 The Customer expressly agrees that it will at all times maintain and keep effective insurance policies with reputable insurers with sufficient cover which protect the Customer against any loss or liability which it may incur or suffer arising out of the contract or any act or default of REVENANT in the performance by REVENANT of its obligations to the Customer. Such insurance shall include insurance for any damage or loss for which REVENANT is not liable pursuant to the conditions hereof, insurance which protects the Customer against any accidental loss, damage or destruction to any master tapes, film negative prints, sound tapes, video tapes or visual images or sound held in any media or any other materials of any kind supplied to REVENANT whilst in the possession or control of REVENANT. REVENANT accepts no liability for any liability or loss which arises from any failure by the Customer to maintain and keep effective such insurances.

7.4 Any recommendations or suggestions relating to the use of any goods supplied by REVENANT are given in good faith but it is for the Customer to satisfy itself of the suitability of

the goods for its own particular purpose. Accordingly unless otherwise expressly agreed in writing and notwithstanding and without limiting condition 7.1, REVENANT gives no warranty as to the fitness of the goods for any particular purpose even though that purpose may be specified in the Customer's order and any implied warranty or condition (statutory or otherwise) to that effect is excluded.

7.5 In the case of goods or component parts of goods supplied by REVENANT but not of REVENANT' manufacture, REVENANT shall be entitled to assign to the Customer its rights against its supplier and such rights shall be taken in extinction of and in substitution for any rights which the Customer would otherwise have had against REVENANT.

7.6 The customer acknowledges that it is not possible for REVENANT to obtain insurance against any lost costs of production arising from loss or damage to the Customer's property.

## **8. Intellectual Property and Data Protection**

8.1 The Customer shall indemnify REVENANT from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any defamatory or libellous matter or any infringement or alleged infringement of any patent, trademark, copyright, registered design or design copyright or other exclusive right including any moral right claim or any other title of any third party in respect of any work carried out for the Customer by REVENANT.

8.2 Each of REVENANT and the Customer acknowledge and agree that copyright in underlying materials processed by REVENANT in the performance of its services and/or embodied in materials produced by REVENANT may be owned by third parties and that the use by the Customer of all materials processed and/or produced by REVENANT shall be subject always to the Customer obtaining any and all necessary licenses and consents from the relevant underlying rights owner(s). The Customer hereby grants to REVENANT a perpetual and royalty free license to use all materials processed and/or produced by REVENANT on the Customer's behalf to promote REVENANT' business and in connection with appropriate industry awards.

8.3 Without limitation to the rights of REVENANT at law, the Customer acknowledges and agrees that if, in the course of fulfilling the Customer's order and/or processing or producing materials on behalf of the Customer, REVENANT discovers or devises any techniques or know how, all rights of every kind in and to such techniques and know how, shall vest absolutely in REVENANT.

8.4 Notwithstanding anything to the contrary herein, REVENANT shall retain ownership and possession of, and shall not be required to deliver to the Customer, any mechanical devices, processes, contractor's know how, source or object code or application software, hardware or bespoke equipment which are used as tools to create the Materials ('Contractor Technology'), as well as intellectual property rights related to the Contractor Technology, included but not limited to, any copyrights, trademarks, trade secrets, or patents in connection therewith. Notwithstanding the foregoing, REVENANT hereby grants to the Customer a non-exclusive license in and to the Contractor Technology in perpetuity, to the extent only that the same is necessary for the exploitation of the Materials and all ancillary and allied rights therein and thereto by the Customer as envisaged by the parties hereunder and within any estimate or contract supplied by REVENANT for a particular project.

8.5 The Customer acknowledges that in the course of its dealings with REVENANT, REVENANT may acquire personal data which relates to the Customer and/or any of its officers, employees or contractors and the Customer hereby consents to REVENANT, in accordance with its authorisation and the Act, collecting, storing, processing and transferring to third parties such personal data. The Customer further consents to the sale or transfer by REVENANT of such personal data in connection with an assignment or transfer of any of its assets and its disclosure in compliance with any rule of law or order of competent authority.

8.6 The Customer's consents pursuant to this condition 8 are given by it for itself and on behalf of (if any) its officers, employees and contractors and the Customer hereby warrants to REVENANT that it has the authority to give such consent on behalf of those persons.

## **9. Customer's Materials**

9.1 Where the Customer supplies any materials to REVENANT or where any materials or goods which are the property of the Customer are otherwise left in REVENANT' possession:-

9.1.1 notwithstanding the terms of condition 7.1. above, REVENANT shall be under no liability in respect of any loss or damage or otherwise arising as a result of damage to or the loss or destruction of such materials or goods;

9.1.2 without limiting the terms of condition 7.3 above, the Customer shall insure all such materials or goods to their full value against all risks; and

9.1.3 the Customer shall remove all such materials or goods within six months of the date of issue of REVENANT' invoice relating to such materials or goods in respect of which the materials have been utilised and in default, REVENANT shall be entitled to return all such materials or goods to the Customer and to charge the Customer for any costs and expenses incurred by REVENANT in so delivering such materials or goods. Until the removal or return of the materials or goods, REVENANT shall be entitled to store the materials and goods and to charge the Customer the reasonable costs of so doing and to tender its account for such charges under condition 5. In the event that REVENANT does not so return such materials or goods, REVENANT shall be under no liability whatsoever for any loss or damage to such materials or goods whilst they are in the possession of REVENANT and the Customer is advised to maintain insurance to the full value of such materials or goods against all risks.

9.2 Where materials are supplied or specific instructions are given by the Customer, REVENANT accepts no liability for any reduction in the quality of REVENANT' services caused by defects in or the unsuitability of such materials so supplied or by REVENANT' adherence to such specific instructions.

9.3 the Customer recognizes and accepts that REVENANT does not have specialist storage facilities for certain materials including film stock of any kind.

9.4 REVENANT shall be entitled to destroy, erase or otherwise dispose of as it sees fit any materials or Customer's property in its possession and uncollected by the Customer after the expiration of six months from the end of the booking period and while uncollected by the Customer, such materials or Customer's property shall be held by REVENANT' at the Customer's own risk.

## **10. Risk and Title**

10.1 Risk shall pass to the Customer so that the Customer is responsible for all loss, damage or deterioration to the goods the subject of the contract:-

10.1.1 if REVENANT delivers the goods by its own transport or, in accordance with a specific contractual obligation, arranges transport for the goods at the time when the goods or a relevant part thereof arrive at the place of delivery; or

10.1.2 in all other circumstances, at the time when the goods or a relevant part thereof leave the premises of REVENANT, or

10.1.3 if risk otherwise passes in accordance with the conditions hereof.

10.2 Title to the goods the subject of the contract or any relevant part thereof shall only pass to the Customer upon the Customer paying to REVENANT all sums due and payable by it to

REVENANT under the contract and all other prior contracts between REVENANT and the Customer;

10.3 REVENANT may recover goods in respect of which title has not passed to the Customer at any time

10.4 Until title to the goods has passed to the Customer pursuant to the terms hereof:

10.4.1 it shall possess the goods as a bailee of REVENANT on the terms of these conditions;

10.4.2 if REVENANT so requires the Customer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to REVENANT;

10.4.3 the Customer shall be entitled to re-sell or use the goods in the ordinary course of its business but shall account to REVENANT in respect of the proceeds of sale or otherwise of such goods;

10.4.4 the Customer shall maintain records of the persons to whom it sells or disposes of the goods and of the payments made by such persons for such goods and will allow REVENANT to inspect those records on request; and

10.4.5 REVENANT shall be entitled to trace the proceeds of sale or otherwise of the goods.

10.5 The Customer hereby irrevocably authorises REVENANT, its officers, employees and agents to enter upon any premises of the Customer for the purpose of repossessing any goods in respect of which title has not passed to the Customer and/or to ensure that the provisions of this condition 10 are being complied with.

## **11. Customer input and access to/use of REVENANT' premises and equipment**

11.1 The Customer shall be solely responsible for ensuring that all information, advice and recommendations given to REVENANT either directly or indirectly by the Customer or by the Customer's agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by REVENANT of such information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless REVENANT specifically agrees in writing to accept responsibility.

11.2 The Customer hereby undertakes to REVENANT to ensure that all of its personnel (to include all employees and agents of the Customer) that shall at any time have access to any premises occupied by REVENANT or at which any of REVENANT' equipment shall be kept all such persons shall at all times:

11.2.1 observe all rules and regulations in force at the applicable premises to include health and safety regulations and any rules governing the use of equipment and/or facilities at the applicable premises;

11.2.2 keep confidential and not divulge or communicate or make any use of any confidential information (being any and all information which relates to and/or concerns the business or activities of REVENANT and/or any customer of REVENANT), which the applicable person shall become aware of as a result of being present at the applicable premises.

11.3 The Customer shall indemnify REVENANT from and against all actions, claims, costs, charges, expenses and proceedings arising from or incurred by reason of any breach or non- observance of any provision of condition 11.2 by any of the Customer's personnel.

## **12. Insolvency**

12. If the Customer shall become bankrupt or under the provisions of Section 123 of the Insolvency Act 1986 shall be deemed to be unable to pay its debts or compounds with its

creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation) or if a Receiver or Manager or Administrative Receiver is appointed of all or any part of its assets or undertaking, REVENANT shall be entitled to cancel the contract in

whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to REVENANT.

### **13. Force Majeure**

13. In the event of the performance of any obligation accepted by REVENANT being prevented, delayed, or in any way interfered with by any act of government, war, industrial dispute, strike, breakdown of machinery or equipment, accident, fire or by any other cause beyond REVENANT control, REVENANT may at its option suspend performance or cancel its obligations under the contract without liability for any damage or consequential loss resulting there from, such suspension or cancellation being without prejudice to REVENANT' right to recover all sums owing to it in respect of goods delivered and costs incurred up to the date of the suspension or cancellation.

### **14. Sub-contractors**

14. REVENANT shall be entitled to appoint one or more sub-contractors to carry out all or any of its obligations under any contract between REVENANT and the Customer.

### **15. General**

15.1 The Customer shall observe the provisions and requirements of all applicable trade union agreements and shall indemnify REVENANT against any costs, expenses or loss incurred by it as a result of any failure by the Customer to do so.

15.2 Where appropriate and required by REVENANT (but not otherwise), screen credits shall be given to REVENANT and nominated individuals for all goods, services or facilities supplied by REVENANT.

15.3 Headings used in these conditions are purely for ease of reference and do not form any part of or affect the interpretation of these conditions.

15.4 Nothing in these conditions shall operate to relieve REVENANT from any liability for any fraudulent misrepresentation made to the Customer at any time.

15.5 If any provision of this contract as applied to either party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this contract or the validity or enforceability of this contract generally.

15.6 References to REVENANT shall, as the context permits, include its licensees, sub contractors and assigns.

15.7 References to goods shall include any and all forms of audio and audiovisual material processed and/or produced by REVENANT on the Customer's behalf such as advertisements.

15.8 The words "include" and "including" shall not be construed restrictively.

### **16. Credits**

16. The Customer shall ensure that REVENANT is given screen credits in respect of the Facilities and Services supplied by REVENANT in a form approved in advance by REVENANT. The Customer hereby grants to REVENANT a perpetual and royalty-free license to refer to the Customer and to use all or any part of the Materials processed or produced by REVENANT on the Customer's behalf in order to promote or advertise REVENANT' business.

**17. Legal**

17. The contract shall be governed and interpreted exclusively according to the Law of Scotland and shall be subject to the jurisdiction of the Scottish Courts only.