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## KINESOMANIA - STANDARD TERMS AND CONDITIONS

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### 1. Application of Terms and Conditions

- 1.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation or offer of the Seller which is accepted by the Buyer, or any order of the Buyer which is accepted by the Seller; and
- 1.2 These Terms and Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted by the Seller, or any such order is made or purported to be made, by the Buyer.

### 2. Interpretation

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Business Day”</b>	means any day other than a Saturday, Sunday or bank holiday;
<b>“Buyer”</b>	means the person who accepts a quotation or offer of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;
<b>“Contract”</b>	means the contract for the purchase and sale of the Goods which shall incorporate, and be subject to, these Terms and Conditions;
<b>“Contract Price”</b>	means the price stated in the Contract payable for the Goods;
<b>“Goods”</b>	means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with the Contract;
<b>“Month”</b>	means a calendar month; and
<b>“Seller”</b>	means Gawwk Ltd, a company registered in England under 5113299 Trading as Kinesomania of Suite 12, 6 Nelson Mews, Southend on Sea, Essex SS1 1AL and includes all employees and agents of Gawwk Ltd.

- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- a) “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- b) a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;



a compulsion for movement - an excessive desire to be on the move

- c) "these Terms and Conditions" is a reference to these Terms and Conditions and any Schedules as amended or supplemented at the relevant time;
  - d) a Schedule is a schedule to these Terms and Conditions; and
  - e) a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule.
  - f) a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include the other gender.

### 3. **Basis of Sale**

- 3.1 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 3.2 No variation to these Terms and Conditions, or to the Contract, shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 3.3 Sales literature, price lists, website pages and other documents issued by the Seller in relation to the Goods are subject to alteration without notice and do not constitute offers to sell the Goods which are capable of acceptance. No contract for the sale of the Goods shall be binding on the Seller unless the Seller has issued a quotation which is expressed to be an offer to sell the Goods or has accepted an order placed by the Buyer by whichever is the earlier of:
- the Seller's written acceptance;
  - the Seller's invoice.
- 3.4 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 4. **Orders and Specifications**

- 4.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 4.2 The specification for the Goods shall be that set out in the Seller's quotation document.
- 4.3 Illustrations, photographs or descriptions whether in catalogues, brochures, websites, price lists or other documents issued by the Seller are intended as a



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guide only and shall not be binding on the Seller.

- 4.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Goods are to be supplied to the Buyer's specification, which do not materially affect their quality or performance.
- 4.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

## 5. Price

- 5.1 The Contract Price of the Goods shall be as agreed in writing by the Seller and the Buyer.
- 5.2 Where the Seller has quoted a price for the Goods the price quoted shall be valid for 28 days only or such lesser time as the Seller may specify.
- 5.3 The Seller may allow the Buyer quantity discounts subject to and in accordance with the conditions set out in the Seller's quotation.
- 5.4 The Price is inclusive of fees for digital delivery via the internet.
- 5.5 The Contract Price is exclusive of any applicable value added tax, excise, sales taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Goods, which the Buyer shall be additionally liable to pay to the Seller.

## 6. Payment

- 6.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the Contract Price of the Goods in accordance with the schedule set out and as agreed in writing by the Seller and the Buyer.
- 6.2 The Buyer shall pay an advance fee, as agreed in writing by the Seller and the Buyer, prior to the commencement of the project. All projects require a 50% deposit prior to commencement. Under no circumstance is the deposit refundable once any work on the project has commenced.
- 6.3 Payment shall be made on the due date notwithstanding that delivery may not have taken place and/or that the property in the Goods has not passed to the Buyer. The time for the payment of the Contract Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 6.4 All payments shall be made to the Seller as indicated on the invoice issued by the Seller. All invoices are due upon receipt unless specified otherwise. Invoices are issued by email.

**7. Delivery**

7.1 Delivery of the Goods shall be made by the Seller delivering the Goods via a downloadable link in MP4 format via the internet available for a period of 5 working days.

**8. Risk and Retention of Title**

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.

8.3 Sub-Clause 8.2 notwithstanding, legal and beneficial title of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Contract Price of the Goods and any other goods supplied by the Seller and the Buyer has repaid all moneys owed to the Seller, regardless of how such indebtedness arose.

8.4 The Buyer's right to possession of the Goods in which the Seller maintains legal and beneficial title shall terminate if:

- a) the Buyer commits or permits any material breach of his obligations under these Terms and Conditions;
- b) the Buyer enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986, the Insolvent Partnerships Order 1994 (as amended), or any other scheme or arrangement is made with his creditors;
- c) the Buyer is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors;
- d) the Buyer convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Buyer, notice of intention to appoint an administrator is given by the Buyer or any of its directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer.

**9. Assignment**

9.1 The Seller may not assign the Contract or any part of it to any person, firm or company without the prior consent of the Buyer.

9.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Seller.

**10. Defective Goods**

10.1 Subject as expressly provided in these Terms and Conditions, and except where the Goods are sold under a consumer sale, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

10.2 Except as expressly provided in these Terms and Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law or under statute, or under the express terms of the Contract, for any direct or consequential loss or damage sustained by the Buyer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.

**11. Buyer's Default**

11.1 If the Buyer fails to make any payment as agreed in writing by the Seller and the Buyer, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

- a) cancel the order or suspend any further deliveries to the Buyer;
- b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- c) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 20% per annum above the Bank of England's base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

11.2 This condition applies if:

- a) the Buyer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract;
- b) the Buyer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation;
- c) an encumbrancer takes possession, or a receiver is appointed, of any of

the property or assets of the Buyer;

- d) the Buyer ceases, or threatens to cease, to carry on business; or
- e) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.3 If sub-Clause 11.2 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 12. **Limitation of Liability**

12.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract Price; and

12.2 the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 13. **Confidentiality, Publications and Endorsements**

13.1 The Buyer will regard as confidential the contract and all information obtained by the Buyer relating to the business and/or products of the Seller and will not use or disclose to any third party such information without the Seller's prior written consent provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Buyer's default.

13.2 The Buyer will not use, authorise or permit any other person to use any name, trademark, house mark, emblem or symbol which the Seller is licensed to use or which is owned by the Seller upon any premises, note paper, visiting cards, advertisement or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Seller and (where appropriate) its licensor.

13.3 The Buyer will use all reasonable endeavours to ensure compliance with this Clause 13 by its employees, servants and agents.

13.4 The provisions of this Clause 13 shall survive the termination of the Contract.

## 14. **Communications**

14.1 All notices under these Terms and Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

14.2 Notices shall be deemed to have been duly given:

- a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or

- b) when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated.

14.3 All notices under this Agreement shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## 15. Data Protection

15.1 The Buyer must ensure that all necessary arrangements have been made with, and permissions obtained from, people and places that may be recorded on video as a result of the Company supplying the product(s) or service(s) - and that such recording is in compliance with Data Protection.

## 16. License

16.1 All videos come with the following licence: Unlimited non-broadcast use, non-exclusive licence.

16.2 This means that you can use the video as you like through any number of non-broadcast mediums and with an unlimited number of views. You own the video in its entirety. The content within the video is non-exclusive meaning we may re-use elements, characters, props or animations in other videos without restriction. If you would like an unlimited use, exclusive licence, please contact us.

16.3 Broadcast refers to channels accessed via freeview, sky, cable etc.

## 17. Copyright

17.1 The Buyer retains the copyright to data, files, fonts and graphic logos provided by the Buyer, and grants Seller the rights to publish and use such material.

17.2 The Buyer must obtain permission and rights to use any information or files that are copyrighted by a third party. The Buyer is further responsible for granting Seller permission and rights for use of the same and agrees to indemnify and hold harmless Seller from any and all claims resulting from the Buyer's negligence or inability to obtain proper copyright permissions. Go ahead of a project by cleared advance payment shall be regarded as a guarantee by the Buyer to Seller that all such permissions and authorities have been obtained. Evidence of permissions and authorities may be requested.

17.3 Where stock photography, graphics, audio and / or video is provided by Seller, Seller grants the Buyer the rights to publish and use such material within the video provided. Those items may not be used for other purposes without the express written permission of Seller.

## 18. Changes to Drafts and Production

18.1 Unlimited rounds of changes to the storyboard and animation are included as standard.

18.2 Within reason such changes may include, but are not limited to: changes to timing, animation, titles, video edits/cuts, brightness/contrast/colour balance, minor manipulation of stylisation, minor changes to character design or set/location design.

18.3 We always advise prior to beginning chargeable work. Requests for additional changes to components previously signed off and approved will be charged at our standard hourly rate in addition to the agreed contract price.

18.4 You will provide us with all the source media including digital video, logos,

trademarks, audio, photography required to carry out our obligations under the contract prior to commencing work, unless agreed otherwise.

- 18.5 We will retain source files for all products and services rendered. We do not provide clients with source files/RAW/Library content produced by us for video projects. All projects are for the provision of an MP4 video file only.

## 19. Specification

- 19.1 Script: A script will be written or adapted based on your brief. Kinesomania will make unlimited amendments until you are happy with the script. Once your sign off is provided on the script any further amendments may be chargeable.
- 19.2 Voiceover: A voiceover will be provided at up to 3 minutes in duration. Voiceovers in excess of 3 minutes in length may incur an additional charge. The voiceover will be of professional quality. The voiceover will be the exact text read from the copy of the script signed off by the client. Any changes to the script that results in either the entire or partial re-recording of the voiceover may incur an additional charge.
- 19.3 Music: Royalty free music will be provided to conform with your brief and the video style. Music may initially be provided in a watermarked form. Once a client has signed off the video a final version will be provided including unwatermarked full quality music. The music may not be used for any purpose other than the video it is provided on. If music needs to be changed following sign off of the video an extra charge may apply.
- 19.4 Characters: A video may include simple, complex or fluid characters.
- a) "Characters" refers to both persons and animals.
  - b) Simple characters may animate in position but the character's graphics themselves remain unchanged (a simple character excludes, for example, facial expressions, lip syncing, joint movement).
  - c) Complex characters may animate in position and the character's graphics may themselves be animated. Such complex character animations may include simple facial expressions, simple lip syncing, pin jointed movement.
  - d) Fluid characters refer to full motion animation.

## 20. Turnaround

- 20.1 Kinesomania aims to work to fixed turnarounds where possible. Although this may not be possible due to the varying nature of job requirements, Kinesomania will make every effort to meet the deadlines below for 2D animation projects:
- a) Start the project within 2 working days of receiving the cleared advance payment.
  - b) Initial script produced within 5 working days from project start or receipt of brief whichever is later.
  - c) Visual guide produced within 6 working days from sign off of the script.
  - d) First draft storyboard produced within 6 working days from sign off of the script.
  - e) First draft animation produced within 10 working days from sign off of the visual guide and storyboard.

- 20.2 Specific deadlines provided will be deemed to include a proviso that in the event that Kinesomania requires the decision, approval, consent or any other communication from the Buyer in order to continue with the provision of the project or any part thereof at any time, the Buyer shall provide the same in a reasonable and timely manner. Any delay in the project resulting from the Buyer's failure or delay in responding to such communications shall not be the responsibility or fault of Seller.
- 20.3 At the completion of each stage, such materials will be deemed to be accepted and approved unless the Buyer notifies Seller otherwise within five (5) working days of the date the review materials are made available to the Buyer.
- 20.4 Kinesomania's office hours are 9.00 a.m. to 5.30 p.m. Monday to Friday unless notified otherwise.

## 21. **Media Formats**

- 21.1 You will provide all media in the following formats using commonly accepted codecs compression:
  - a) Video: MP4, Audio Video Interleave File (AVI), Apple Quicktime Movie (MOV), Windows Media Video File (WMV)
  - b) Audio: Advanced Audio Coding File (AAC), MP3 Audio (MP3), Wave Audio File (WAV), Windows Media Audio File (WMA)
  - c) Images: Bitmap Image File (BMP), Graphical Interchange Format (GIF), JPEG image file (JPG), portable network graphic (PNG), Adobe Photoshop file (PSD), Encapsulated PostScript file (EPS), Adobe Illustrator file (AI)
  - d) Font install files for a Windows machine.
  - e) To send video/audio/images in alternative formats please contact us and we will try and accommodate your specification.
- 21.2 We provide all finished video projects in 1080p high definition MP4 format (1080p 1920x1080px, 25.000 fps) unless otherwise agreed.

## 22. **Relationship of the Parties**

- 22.1 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Agreement.

## 23. **Force Majeure**

Neither Party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

## 24. **Waiver**

The Parties agree that no failure by either Party to enforce the performance of any provision in these Terms and Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be deemed to be a waiver of any preceding or subsequent breach and shall

not constitute a continuing waiver.

**25. Severance**

The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and, by extension, the Contract). The remainder of these and the Contract shall be valid and enforceable.

**26. Third Party Rights**

A person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

**27. Law and Jurisdiction**

27.1 These Terms and Conditions and the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

27.2 Any dispute, controversy, proceedings or claim between the Parties relating to these Terms and Conditions or to the Contract (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.