

TERMS AND CONDITIONS

PURCHASE ORDER

For the purpose of this Terms and Conditions ("T&C"), "Goods" means materials, supplies or items sold and purchased under the Purchase Order, including any installed or tested materials, supplies or items of all kinds, as well as services that will be provided under the Purchase Order and shall also include Materials (as defined under Clause 1 below).

1. Ownership / License: Purchaser is acting as agent for the client named on the Order (the "Client"). Supplier is acting as an independent contractor, and all materials created under the Order (as defined under Clause 5 below), including without limitation all literary, dramatic, musical or artistic work, sound recordings, films, broadcasts, programs, layouts, photographs, scripts, ideas, concepts, characters, specifications, graphics, films, software and other property or materials furnished hereunder (the "Materials"), are specially commissioned for, but not limited to, inclusion in advertising and/or commercial materials for Client. Subject solely to the limitations specifically set forth on the Order (if any), all Materials shall be deemed to be works commissioned by Client and will be and remain the absolute and exclusive property of Client, its successors and assigns, in perpetuity, notwithstanding anything to the contrary in the relevant copyright law of Thailand. Supplier further agrees to execute and cause others who in any way contribute to the creation of the Materials to execute all further documents that, in the judgment of Client and/or Purchaser, are required or useful to establish, protect or enforce the rights herein granted or confirmed. To the extent necessary to vest full ownership of the Materials with Client, Supplier hereby irrevocably sells, transfers, and assigns all rights, title and interest, including all existing and future copyright in and to the Materials to Client, and its successors and assigns, without limitation. Such rights include, but are not limited to: (a) ownership of all the Materials; (b) the right to use, communicate, publish, display or reproduce the Materials in advertising or for the purposes of trade or for any other purpose whatsoever; (c) the right to alter, adapt, retouch, or crop or simulate the Materials in any way; (d) the right to secure copyright in the Materials anywhere throughout the world; (e) the right to license, exploit, sell, assign, or otherwise dispose of the Materials or any of the said rights included therein for any purpose which Purchaser, Client and their assigns and licensees may see fit; and (f) any and all subsidiary rights in the Materials including characters or parts which are contained in the Materials. Without limiting the generality of the foregoing, Supplier hereby waives any and all claims of "moral rights" and other rights of any kind or nature that it has related to the Materials and hereby conveys to Client any such rights of Supplier as may exist without reservation or limitation. Supplier agrees that Purchaser shall have the right, without prior approval, to use the Materials following their publication to promote Purchaser's services, including without limitation use on Purchaser's website.

2. Representations and Warranties: Unless otherwise specified on the Order, Supplier hereby represents and warrants: (a) that all assignments, releases, permissions, clearances, consents and waivers (collectively, "Releases") have been obtained, in writing, from any and all persons or companies whose name, likeness, voice, prop, costume, property or other attribute is contained in the Goods provided in connection with this T&C and may be used throughout the world and in perpetuity, without limitation, and Supplier shall furnish Purchaser with a copy of such signed Releases; (b) that it has the full and unencumbered right and authority to license, sell or assign the rights herein conveyed (as applicable), or to confirm the Client's authorship and/or ownership of the Goods, and the same may be used, published, communicated, adapted or reproduced for advertising or trade purposes, or for any other purpose whatsoever, without violating any laws or the rights of any third parties; (c) that it has not made and shall not make any disposition of any copyright or other interest in any of the Materials, whether in assignment or encumbrance, and confirms that all copyright and other rights stated herein are subject to the full and exclusive enjoyment by Client; (d) the prices specified in the Order are no less favorable than those which Supplier would be willing to offer to or accept from any other party for the services to be rendered or the goods to be sold and such prices comply in all aspects with the laws, rules and regulations relating thereto; (e) all Goods provided hereunder will be provided in a professional manner with due care, in compliance with all laws, rules and regulations, and in accordance with all specifications; (f) Supplier will comply with the [WPP Code of Business Conduct – Supplier version](#) in connection with the goods and/or services Supplier is providing hereunder; and (g) Supplier provides a warranty against defects or failure of the Goods, including their spare parts and accessories (if any), which are the result of normal use, for a period of one year after the time the Purchaser issues evidence of acceptance thereof to the Supplier, or the time the Supplier replaces the defective spare parts or accessories and the Purchaser issues evidence of acceptance thereof to the Supplier (as the case may be). The Supplier shall complete its rectification and/or replacement within thirty (30) days after the date of receiving notice thereof from the Purchaser, without charging any expense, to ensure that the Goods shall at all times be available for use by the Purchaser.

3. Termination of the T&C and/or the Order: Except as otherwise provided under this T&C, if the Purchaser wishes to immediately terminate the T&C, the Purchaser may do so by giving a written notice thereof to the Supplier. The Supplier shall then return any deposits or advance payments that it may have received under this T&C and the Orders (if any) to the Purchaser within the period not exceeding 15 (fifteen) days after the date the Supplier receives such written notice. The Supplier is not entitled to claim any compensation or expense as a result of such termination of the T&C.

Purchaser may cancel this Order at any time prior to its acceptance of the Goods or work covered by this Order, upon written notice to Supplier. In such event, unless such termination is based on Supplier's breach, Purchaser shall be liable to pay Supplier, in lieu of the price specified in this Order, any verified direct costs incurred by Supplier in the performance of its obligations hereunder prior to such cancellation, provided always, however, that the total amount of such costs shall not exceed the price specified on the Order for those Goods that have been completed, in whole or in substantial part, by Supplier. It is agreed that time is of the essence, if the Supplier fails to comply with the T&C or any Orders, the Purchaser may take any action, or the combined actions as follows:

- (a) to impose a daily penalty at the rate of two percent (2%) of the total payment amount under the relevant Order, from the date of the Supplier's failure to fulfil the Order until the Supplier fully conforms to the Order, or the date the Purchaser terminates the relevant Order (if the Purchaser exercises the right of termination), without prejudice to the Purchaser's right to claim any other compensation as a result of such termination. In the event that the Goods are agreed to be delivered in a set, if the Supplier makes a partial delivery, or fails to deliver any component part, thus making it impossible for such Goods to be fully operational, it shall be deemed that such Goods have not been delivered in their entirety, and a penalty shall be imposed on the entire set thereof. If the Purchaser has not yet terminated the Order and finds that the Supplier will not be able to continue to honor the Order, the Supplier may terminate such Order and confiscate the performance security or make a claim against the bank that issued the letter of guarantee (if any), as well as a claim for the additional price as prescribed in (c);
- (b) to immediately terminate the relevant Order or cancel all other existing Orders between the Purchaser and the Supplier, including the T&C;
- (c) to procure all or any part of the undelivered Goods under the relevant Order from another supplier, whereby the Supplier shall be liable for the additional price in excess of that stipulated in the Order that is terminated; and/or
- (d) to demand that the Supplier indemnify the Purchaser for any other damages and expenses (if any).

If at any time prior to delivery of all Goods to Purchaser: (i) there shall be filed by or against Supplier an application in bankruptcy, insolvency, judicial management or for the appointment of a receiver or trustee for all or part of Supplier's property, or (ii) Supplier shall make an arrangement for the benefit of creditors, or (iii) Supplier in any manner subjects the elements and materials to a lien in favor of any third party; or (iv) Supplier becomes insolvent or its financial stability becomes so impaired as to endanger its ability to produce and deliver the Goods free and clear of all liens, claims or encumbrances, then, Purchaser shall have the option to terminate this T&C and complete ownership of all elements and materials shall immediately vest in Purchaser, and Supplier shall promptly deliver such Goods as directed by Purchaser. In such event Purchaser shall reimburse Supplier for its out-of-pocket costs and expenses theretofore incurred by Supplier in the normal routine of producing said Goods.

4. Early Delivery: Supplier's signature on the Order confirms Supplier's agreement to the terms herein. Notwithstanding the foregoing, if delivery is made prior to Supplier's signing the Order, Supplier's delivery of the Goods will constitute its unqualified acceptance of all the terms of this T&C, including all transfer and/or assignment of copyright in the Goods to Client under Clause 1 above.

5. Order: All orders for Goods to be supplied shall be given from time to time, in writing, by the Purchaser on the Purchaser's Purchase Order form (referred to herein as the "Order"). The Order shall clearly state the details and nature of the Goods to be supplied and shall also state the amount, calculated at the rates specified in the Contract, inclusive of Value Added Tax but subject to withholding tax (if any), that shall become due to the Purchaser on the satisfactory completion of supply, inspection, approval and acceptance of all Goods specified on the Order. The Order shall be subject to and governed by this T&C. If any wording in the Order and/or any documents attached thereto is contrary to, or inconsistent with this T&C, the Order shall prevail. In any case of doubt, the Supplier shall comply with the Purchaser's decision. On receipt of the Order, the Supplier shall commence supply of the Goods referred to therein and complete the same within the deadline stipulated in the Order or on or by such date as the Purchaser shall direct. Supplier is required to issue invoice/ billing to Purchaser within thirty (30) days upon receiving the Order. The Goods covered hereby shall be delivered strictly within the period and in the manner specified in the Order, if no time is specified, within a reasonable time. In the event the Supplier is to arrange the manner of delivery, the Supplier shall deliver the Goods by a carrier of good reputation, and of the type normally used for transportation of the type of Goods covered hereby. The Goods shall be carried by a usual route or routes without any extraordinary deviation. Upon completion of delivery, the Supplier shall, at the Supplier's expenses inform, by email, facsimile or telegraph, the Purchaser of all particulars regarding such delivery including the courier's name and information, name of the person who receives the delivery, delivery date and time, loading place, invoice amount, etc. Unless specified otherwise, title in the Goods, including the risk of loss of or damages to the Goods shall be transferred to Purchaser only at the time when the Goods have been delivered to Purchaser and the Purchaser subsequently inspects the Goods and finds them to be in quantity and conditions acceptable to and approved by the Purchaser.

6. Acceptance: The Goods supplied hereunder must comply with Purchaser's specifications and are subject to Purchaser's approval. The Goods shall be received and paid subject to inspection and approval. The Purchaser shall have privilege of return at Supplier's expense if the Goods are not in compliance with the specifications hereof. In the event of such return, without limiting any other remedies available to Purchaser, Purchaser shall be entitled to a refund of all amounts paid (if any). Defects are not waived by Purchaser's failure to notify Supplier of such defects upon receipt of the Goods.

7. Assignment: This T&C, the Order or any sums payable hereunder may not be assigned by Supplier without the prior written consent of Purchaser.

8. Taxes: Supplier agrees that prices quoted and shown on the Order include any and all applicable local taxes and Value Added Tax (VAT) but will be subject to withholding tax (if any). Liability for any sales and use or similar taxes and any penalties and interest charges due on these taxes shall be Supplier's sole responsibility. In the event Purchaser is required to pay such amounts for whatever reason, Supplier agrees to immediately reimburse Purchaser thereof.

9. Property: Any and all property of Purchaser or Client, in the possession or control of Supplier, shall be and remain the property of Purchaser or Client (as applicable), and Supplier shall be responsible for any loss or damage occurring to such property while such is in Supplier's possession or control.

10. Books and Records: Supplier agrees to keep such books and records as shall readily disclose the basis for any charges ordinary or extraordinary billed to Purchaser under this T&C or the Order, and shall make them available for examination and audit by Purchaser and/or Client or an outside auditor chosen by and paid for by Purchaser and/or Client for a period of three years after receipt by Supplier of final payment under this Order. For such period of three years, Purchaser and/or Client shall have the right to audit (i) the books and records relating to all such charges, and (ii) any other materials related to Supplier's compliance with the terms and conditions of this T&C or the Order, and Supplier, upon request of Purchaser or Client, shall make all such books and records available for such examination. If, upon such audit, Client or Purchaser shall determine that Supplier's charges exceed the amounts properly chargeable to Purchaser or Client as the case may be, Supplier shall, without limiting Purchaser's other available rights or remedies, promptly refund to Purchaser or Client, as appropriate, the amount of such overcharges.

11. Confidentiality: Supplier covenants and agrees that it will not, at any time, disseminate, reveal or otherwise make available to any person, or use for its own purposes, any information of a proprietary or confidential nature concerning Purchaser or Client obtained by it regarding, but not limited to, trade secrets and confidential information, advertising matters, ideas, plans, techniques and accounts, products, personal data, business, customers or methods of operation (referred to herein as "Confidential Information"), except as otherwise required in the performance of its obligations hereunder. Supplier expressly agrees that the existence and negotiation of this T&C or the Order shall be considered Purchaser's and Client's Confidential Information subject to the restrictions contained in this provision. Prior to using the Goods for self-promotional purposes, Supplier must obtain written approval from Purchaser. Supplier further agrees to execute Purchaser's and/or Client's standard confidentiality agreement upon request by Purchaser. The restrictions in this Clause 11 will be in addition to and without prejudice to any other duty or obligations of the Supplier as implied by law and is not exhaustive.

12. Indemnification: Supplier agrees to defend, indemnify and hold harmless Purchaser, Client, and their respective subsidiaries, affiliates, parents, partners, officers, directors, employees, agents, assigns and licensees from and against any and all damages, claims, liabilities, losses, costs or expenses (including reasonable legal fees and expenses) any of them may incur or be liable for arising out of or resulting from: (a) any breach or alleged breach by Supplier of any representation or warranty made by Supplier hereunder; (b) the performance of this T&C by Supplier (including but not limited to Supplier's employees, agents, subcontractors and designees); (c) the use or reproduction in any manner whatsoever, including advertising or trade purposes, of the Goods; (d) infringement of any copyright, trade secret, know-how or other intellectual property rights of any third party resulting from the importation, possession, use of the Goods or any part thereof in any country; and any claim made or threatened to be made by any third party based on any death, bodily injury or property damage occurring or suspected to occur directly or indirectly out of the Goods, including without limitation, a claim based on the product liability under the applicable laws in each of the countries where the Supplier and the Purchaser are located and/or the Goods exist.

13. Limitation of Liability: In no event shall Purchaser or Client or any of their respective parents, affiliated companies, directors, officers, employees, shareholders, licensees or agents be liable to Supplier for more than the total amount actually due and payable to Supplier as specified in the Order. Under no circumstances shall Purchaser or Client or any of their respective parents, affiliated companies, directors, officers, employees, shareholders, licensees or agents be liable to Supplier for any indirect, incidental, consequential, special, punitive or exemplary damages, whether arising under contract, warranty, or tort (including negligence or strict liability) or any other theory of liability, regardless of whether Purchaser knew or should have known of the possibility of such damages.

14. Insurance: Supplier agrees that it will at all times maintain insurance policy(ies) from an insurance carrier acceptable to Purchaser sufficient to cover Supplier's obligations under this T&C, including, without limitation, Professional (E&O) liability insurance with limits of not less than Baht 3,000,000 per occurrence and Baht 3,000,000 in the aggregate; commercial general liability insurance with limits of not less than Baht 3,000,000 per occurrence and Baht 3,000,000 in the aggregate; and workers' compensation providing statutory benefits and employer liability policy with coverage of no less than Baht 3,000,000 for bodily injury by accident, Baht 3,000,000 bodily injury by disease, and no less than Baht 3,000,000 policy limit. Supplier shall provide Purchaser and Client with certificates naming Client and Purchaser as additional insureds on all such policy(ies) upon request.

15. Performance Securities: If the Purchaser requires that the Supplier provide performance security under any Order, the Supplier shall deliver performance security in an amount as specified by the Purchaser to the Purchaser to secure its performance under such Order. Such performance security may be in any of the following forms: (i) cash; (b) cashier's cheque, made payable to the Purchaser and dated the date of executing the Order or no more than three (3) business days before such date; (c) guarantee issued by a domestic bank, in the form of guarantee prescribed by the Purchaser; or (d) Thai government bond. The Purchaser shall return the performance security given under this clause to the Supplier without interest when the Supplier is discharged from its obligations under the relevant Order.

16. Payments: Delivery charges must be fully prepaid by Supplier unless other terms are specified herein. Payments shall be made by Purchaser as per agreed terms, after Purchaser is in receipt of satisfactory Goods, Releases and invoices, as herein above described, by wire transfer to the account which shall be designated by the Supplier. Any and all additional costs incurred due to changes in the Order specifications/ overages must be submitted in writing and approved by Purchaser along with estimate/explanation and Purchaser is not responsible for any unapproved additional costs. All vendors that Supplier hires will bill Supplier directly (as opposed to Purchaser or Client) except as otherwise expressly agreed by Purchaser in writing.

17. Gifts and Conflicts of Interests: Supplier shall not make or offer a gratuity or gift of any kind to Purchaser's employees or their families. Supplier shall not engage in any activity with Purchaser's employees, competitors, or affiliates that could be perceived as creating a conflict of interest situation unless, after full disclosure of all relevant facts, Purchaser agrees that no conflict in fact is present.

18. Miscellaneous: The terms and conditions set forth herein constitute the entire agreement between the parties with respect to the Goods or work to be performed pursuant to this T&C, the Order and said terms and conditions may not be modified or amended, except by an agreement in writing that specifically references these terms and conditions and that has been signed by both parties' authorized representatives. It is a condition of this T&C that Supplier does not attempt to impose its own terms and conditions on Purchaser, and any attempt by Supplier to unilaterally amend the Order or to impose additional obligations on Purchaser shall be deemed null and void and to be a material breach hereof. No waiver by Purchaser shall be valid unless in writing and signed by Purchaser. Notwithstanding anything contained herein to the contrary, it is hereby expressly agreed and declared that the Purchaser shall not be deemed to have herein authorized the Supplier or its employees to conclude, enter into, execute, acknowledge, deliver, cancel, rescind, revoke, terminate, vary or amend any contract, agreement, arrangement or commitment of any kind or description whatsoever with any third party for or on behalf of the Purchaser. This T&C and the Order shall be construed pursuant to the laws of Thailand regardless of its conflict of laws provisions. The parties hereto agree that the Court of Thailand shall be the exclusive forum and situs for the resolution of any and all disputes, controversies or matters arising herefrom or related hereto.

19. Severability: If any provision of this T&C is held to be invalid, illegal or unenforceable for any reason whatsoever, then notwithstanding such invalidity, illegality or unenforceability, such provision shall be enforced to the maximum extent permitted by law and the remaining terms and provisions of this T&C shall remain in full force and effect in the same manner as if the invalid, illegal or unenforceable provision had not been contained herein.

20. Software / Hardware: In addition to the terms and conditions herein if the Order requires software or hardware to be provided, then the following shall also be applicable to Supplier: Notwithstanding any other provision herein, to the extent any of Supplier's or any third party's software applications, databases, computer programs (including source code and object code for any such programming), executable code or computer hardware (collectively, "Software/Hardware") are incorporated into the Goods or are otherwise provided hereunder, Supplier agrees to identify any pre-existing Software/Hardware and further agrees that unless otherwise specified in the Order, Supplier grants to Purchaser a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser) all or any portion of the pre-existing Software/Hardware incorporated into the Goods or otherwise delivered to Purchaser in connection with the this T&C. For clarity, it is understood that, subject to Supplier's rights in all pre-existing Software/Hardware, Purchaser shall own all original Software/Hardware created hereunder and such original Software/Hardware shall be deemed part of the Goods. Supplier represents and warrants that: (a) the Software/Hardware, and the ideas they express, are original and do not violate or infringe the rights of any other party and that it has the unencumbered right and authority to grant all licenses herein granted; (b) that all Software/Hardware provided under this T&C will perform in accordance with specifications; (c) that the provision of the Software/Hardware (and Customer's exercise of its license to use the same) will not in any way constitute an infringement or other violation of any copyright, patent, trademark, trade secret or other proprietary or personal rights of any third party or any applicable law or regulation; and (d) that the Software/Hardware shall be free of any virus, Trojan horse, time bomb or other harmful or disabling code.

21. Force Majeure: Force majeure shall mean an exceptional event or circumstance which objectively arises and is beyond the Purchaser or Supplier (the "Party")'s control such as natural disasters or similar causes beyond reasonable control of such Party and not either Party's fault. This shall include any act of God, act or omission of government, war, blockade, embargoes, hostilities, fire, explosion, or by any cause (whether similar or not to any of the above events) beyond the reasonable control of the Party and not the Party's fault whose performance is affected. The Party disabled by force majeure event shall use all reasonable endeavors to mitigate the effects of the force majeure event in the best possible way. If performance by the Purchaser is affected or prevented by force majeure, the Supplier may not terminate this T&C or the Order even if it may be entitled thereto, and the Purchaser may, at its sole discretion, extend the time of taking delivery of the Goods or performing its other obligations hereunder or terminate unconditionally and without liability of the T&C. In the event of force majeure that the Supplier is unable to control or protect against, the Supplier shall promptly notify the Purchaser in writing within 7 days after the date of occurrence of such event. The Purchaser shall then, at its sole discretion, determine whether such event is an event of force majeure, and if so, shall extend the period of time under the T&C or the relevant Order as appropriate, provided that each extension does not exceed thirty (30) days. If the Supplier fails to notify the Purchaser of an event of force majeure as prescribed above, it shall be deemed that the Supplier unconditionally waives its right to seek extension of the performance period under the T&C and/or the relevant Order and/or exemption or reduction of the penalty. If performance is delayed for more than three (3) months by any force majeure and the Parties have not agreed upon a revised basis for continuing the work at the end of the delay, then while the cause of the force majeure still exists, either Party may after the 3-month delay period immediately terminate the T&C or the relevant Order by giving a notice in writing to the other Party, in which event the provisions of the termination clause shall apply.

22. Equal Employment Opportunity: In connection with its performance hereunder, Supplier agrees not to discriminate against any employee because of race, religion, color, sex or national origin.

23. Employment of Minors: It is acknowledged that in performing the services required of Supplier hereunder, the services of performers who are minors may be required. In such event, and when specifically requested by Purchaser, Supplier agrees to be the employer of record of such minors, and warrants and represents that it will comply with all applicable laws and regulations concerning such employment, and will make full and proper payments to such minors. If there is any loss or damage to Purchaser or its Clients due to work stoppage or otherwise arising out of Supplier's failure to obtain all necessary permissions or licenses in accordance with the above-referenced applicable laws and regulations, Supplier agrees to accept full responsibility for such failure and to indemnify Purchaser and its Client to any losses, damages or expenses in connection therewith.

24. Independent Contractor: It is understood that Supplier's status hereunder is that of an independent contractor and that all persons employed by Supplier in performing its obligation hereunder shall not be deemed employees of Purchaser or Client, and Supplier shall make whatever payments may be due to such persons and Supplier will comply with all legislation and governmental regulations and policies, and defend, indemnify and hold harmless Purchaser and Client against any claims and demands resulting from Supplier's failure to comply with the provisions of this clause.

PRODUCTION OF DIGITAL CONTENT

If the Order requires production of digital content, then the following terms and conditions shall be applicable to Supplier in addition to the T&Cs. All other terms and conditions under the T&Cs shall remain valid and applicable to the extent they do not conflict with the below terms and conditions.

For the purpose of this T&C, "Digital Content" means any content that exists in the form of digital data. It typically refers to music, information and images that are available for download or distribution on electronic media. It also includes information that is digitally broadcast, streamed, or contained in computer files.

1. Quality: The material produced hereunder shall be subject to Purchaser's approval and acceptance. Supplier agrees that the Digital Content shall be of first class physical and aesthetic quality, technically correct and of a quality at least equal to current standards for Digital Content created for the Internet and will conform with all technical requirements. The quality and timely delivery of the completed Digital Content is of the essence of this T&C. Supplier will bear any costs resulting from its failure to satisfactorily perform its obligations hereunder.

2. Changes and Variations: If at any time, Purchaser desires to make any changes in or variations from the script(s) or storyboard(s) or specifications of the Digital Content or from any material or work in progress and such changes result in additional costs to Supplier, Supplier agrees to notify Purchaser's authorized representative in writing of the amount of such additional costs before any such additional costs are incurred and to proceed only after receiving written authorization from such representative. Reimbursement for such additional costs shall be payable at the same time as the final payment.

3. Purchaser: Purchaser is acting on behalf of its Client as agent for a disclosed principal with respect to all matters arising under this T&C. Purchaser will make payment of all appropriate sums paid to it by its Client (and Supplier shall look to Purchaser solely to the extent Purchaser was paid by Client).

4. Acceptance Testing: Upon the delivery to Purchaser of any Digital Content or deliverable(s), Purchaser shall have thirty (30) days from the receipt to review for performance. Supplier will review Purchaser's objections, if any, and shall have ten (10) days from the receipt of such objections to correct the deficiencies. Upon correction of the deficiencies, Purchaser shall then proceed to re-test and reevaluate the Digital Content or deliverable. Any failure by Supplier to correct a material deficiency shall be deemed a material breach of this T&C, entitling Purchaser to any and all available remedies, including, but not limited to, a refund of the fees paid to Supplier under this T&C (if any), the cost of finding an alternative supplier, and termination of this T&C. No Digital Content or deliverable shall be deemed to be accepted until Purchaser delivers a written notice of its final acceptance to Supplier.

5. Ownership: (a) Subject to subparagraph (b), full and unrestricted ownership of the Digital Content and all other results and proceeds of Supplier's services, including without limitation any literary, dramatic, musical or artistic work, software, computer programming, code, designs, graphics, text, audio files, video files, know-how, ideas and information, modifications, inventions or improvements associated with the Digital Content shall vest and remain in Client at all times and for all purposes whatsoever, immediately upon creation, and without limiting the foregoing Purchaser and Client shall have the sole right to use, communicate, publish, cause to be seen in public, distribute, reproduce, alter, adapt, modify, exhibit, exploit and copyright the same throughout the world without restriction. Supplier will not mortgage, pledge, assign or otherwise encumber any of the above-mentioned materials. Supplier agrees that Digital Content is work commissioned by Client and shall be owned by Client for all purposes in perpetuity, notwithstanding anything to the contrary with relevant copyright law of Thailand. To the extent all or any portion of the Digital Content is not deemed to be a work commissioned by Client, Supplier hereby sells, assigns and transfers all right, title, ownership and interest therein, presently known or hereafter ascertained, including, but not limited to, the right to secure any patent rights and the copyright therein (and all renewals thereof) throughout the world, without any restrictions as to use except as expressly set forth herein, to Client and its successors, assignees and/or licensees. For clarity, Client shall exclusively own all data generated through, by, or related to use of the Digital Content. Supplier agrees to reasonably cooperate (at Supplier's expense) in furthering the intent of this clause and hereby agrees to grant a power of attorney to Purchaser, if necessary, for carrying out the intent of this clause. Supplier shall only use its employees to create the Digital Content, unless it receives Purchaser's prior written consent. In the event that Purchaser has authorized Supplier to use non-employees to create Digital Content, then Supplier shall first secure from each such individual an agreement in writing that assigns all intellectual property rights in such Digital Content to Client in the same manner as set forth in this Clause and present such agreement to Purchaser.

(b) Supplier shall retain all intellectual property rights with respect to any intellectual property owned by Supplier prior to entering into this T&C, including any code, designs, know-how, software applications, databases, computer programs and/or other materials that are of general applicability to Supplier's business ("Supplier Material"); provided, however, that Supplier shall not incorporate any Supplier Material into the Digital Content without Purchaser's prior written consent. In the event of Purchaser's consent thereto, Supplier shall grant to Purchaser and Client a perpetual, irrevocable, fully paid-up, royalty free, transferable, sub licensable (through multiple levels of sublicenses), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser and/or Client) all or any portion of the Supplier Material incorporated into the Digital Content.

6. License and Releases: Supplier agrees to supply to Purchaser prior to delivery to Purchaser of the Digital Content: (a) signed Licenses, in a form acceptable to Purchaser, obtained from the persons, firms or corporations who own or control any literary, dramatic and/or musical works furnished by Supplier for Digital Content, if any, granting to Purchaser, Client and their licensees a license to use such works, and warranting that such persons, firms or corporations have the right to grant such licenses; and

(b) original copies of signed releases from persons supplied by the Supplier who appear in the Digital Content granting Purchaser, Client and their licensees the irrevocable permission and consent of persons to use their names, likenesses, performance and biographical material concerning them in any way, for advertising, marketing, promotional purposes and purposes of trade, in connection with the Digital Content and the uses thereof contemplated hereunder and in connection with the product(s) advertised herein.

(c) If Supplier is supplying special props/costumes/photographs/artwork ("Special Materials"), Supplier represents and warrants to Purchaser and Client that it has full ownership rights to such Special Materials, and the right to grant unrestricted ownership rights in the Special Materials to Client, and the granting of any such rights shall not violate the rights of any third party. Supplier hereby transfers and assigns to Client all rights to the Special Materials, including without limitation, any copyrights or trademarks related thereto.

(d) Without limiting any other provision herein, to the extent Supplier desires to incorporate any third party's software applications, databases, computer programs (including source code and object code for any such programming), executable code or computer hardware, including without limitation free and open source software (collectively, "Third Party Software/Hardware") into the Digital Content or are otherwise provided hereunder, Supplier agrees to identify any Third Party Software/Hardware in writing in advance and will not incorporate such Third Party Software/Hardware in the Digital Content without Purchaser's prior written consent. In the event of Purchaser's consent thereto, Supplier agrees that unless otherwise specified in the Order, Supplier grants to Purchaser and Client a perpetual, irrevocable, fully paid-up, royalty free, transferable, sublicensable (through multiple levels of sublicensees), worldwide, non-exclusive right and license to use, reproduce, distribute, display and perform (whether publicly or otherwise), transmit, prepare derivative works of and otherwise modify, make, import, export and otherwise use and exploit (and have others exercise such rights on behalf of Purchaser and/or Client) all or any portion of the Third Party Software/Hardware incorporated into the Digital Content.

7. Termination of Production: (a) In the event that Purchaser should desire to cancel the production of the Digital Content or to terminate this T&C for any reason, except as set forth in subparagraph (b) below, Purchaser shall pay Supplier all out-of-pocket costs and expenses theretofore incurred by Supplier in the normal routine of producing said Digital Content. Upon such payment, Supplier shall deliver to Purchaser forthwith and Client shall become the sole owner of all exposed negatives and other material produced by Supplier prior to the termination, and Purchaser shall be under no obligation to make any further payments to Supplier with regard to said Digital Content.

(b) If Purchaser cancels this T&C due to Supplier's breach of any of its duties or obligations hereunder, or due to Supplier's fault, then Purchaser shall have the option (i) to pay Supplier all of its out-of-pocket costs and expenses theretofore incurred by Supplier in the normal routine of producing said Digital Content in which event Supplier shall deliver to Purchaser forthwith and Client shall become the sole owner of all exposed negatives and other material produced by Supplier prior to the termination, and Purchaser shall be under no obligation to make any further payments to Supplier with regard to said Digital Content; or (ii) Purchaser may elect to make no payment to Supplier in which event Supplier may retain all films and materials produced by it, but may not use or permit the use: A) of any portions of such materials which show or refer in any manner to Client, its products or services; B) copyrighted music or other literary property owned or licensed by Client or by any third parties; C) talent engaged for the production of Client's Digital Content; or D) any property which, if displayed or exhibited in any manner, could violate the rights of any third parties.

(c) If at any time prior to delivery of all Goods to Purchaser: (i) there shall be filed by or against Supplier an application in bankruptcy, insolvency, judicial management or for the appointment of a receiver or trustee for all or part of Supplier's property, or (ii) Supplier shall make an arrangement for the benefit of creditors, or (iii) Supplier in any manner subjects the elements and materials to a lien in favor of any third party; or (iv) Supplier becomes insolvent or its financial stability becomes so impaired as to endanger its ability to produce and deliver the Digital Content free and clear of all liens, claims or encumbrances, then, Purchaser shall have the option to terminate this T&C and complete ownership of all elements and materials shall immediately vest in Client, and Supplier shall promptly deliver such materials as directed by Purchaser. In such event Purchaser shall reimburse Supplier for its out-of-pocket costs and expenses theretofore incurred by Supplier in the normal routine of producing said Digital Content.

8. Default in Suppliers Payment: Purchaser reserves the right in case of default in Supplier's making payments to any of Supplier's suppliers, performing work on or furnishing material for the Digital Content to be produced hereunder, to (a) pay such suppliers directly, irrespective to any set-offs or counter-claims Supplier may have against suppliers, an amount claimed to be equal to the money owed such supplier by Supplier for work the supplier has performed or material it has furnished with respect to said Digital Content, and such payment shall be deemed payment to Supplier and shall reduce the contract price hereunder, and, at Purchaser's election, have such supplier deliver such Digital Content and all materials relating thereto directly to Purchaser (and Supplier hereby expressly authorizes such delivery) or (b) terminate this T&C without any further obligation to Supplier and Supplier shall immediately return to Purchaser the Digital Content and all materials relating thereto.

9. Publicity Guidelines: Supplier agrees not to use the name of Purchaser, Client or the Goods advertised in the Digital Content, or any part thereof, to any person other than employees of the Supplier, Purchaser or Client, without Purchaser's prior consent.

10. Warranties: Supplier hereby warrants and represents that (a) it is free and has full right to enter into this T&C and to perform all its obligations hereunder and will comply with all its obligations hereunder and will comply with all applicable local laws, legislation and regulations; (b) Supplier is insured in the manner required; (c), the Digital Content may be used as hereinabove provided without violating any laws and without violating or infringing any rights of any third parties, including personnel and suppliers of the Supplier, and the Digital Content and all materials, services and rights which will become the property of Client hereunder shall be free and clear of all liens, encumbrances and claims of any nature; (d) the Digital Content and any other deliverables shall not contain any virus, Trojan horse, worm or other similar harmful or malicious code; (e) Supplier shall comply with the terms and conditions of all applicable third party websites; and (f) it will use reasonable physical and electronic security measures in association with the performance of the services and in handling any Purchaser or Client information appropriate to the nature of such information disclosed to or accessible by Supplier in order to protect such information from unauthorized access, destruction, use, modification or disclosure, and it shall promptly notify Purchaser in writing in the event any unauthorized access to information is suspected and permit Purchaser to control any public notifications, with the reasonable assistance of Supplier.

11. Indemnity: (a) Supplier shall defend, indemnify and hold harmless Purchaser, Client and their respective officers, employees and agents ("Indemnities") from and against any and all claim, damages, losses, liabilities, costs and expenses, including attorney's fees and disbursements, arising out of, resulting from or relating to the production of the Digital Content to be produced hereunder, including but not limited to (i) the breach by Supplier of any of its representations, warranties, duties or covenants contained herein, (ii) violation by Supplier of the rights of any third party, (iii) personal injury, including bodily injury, sickness, disease or death, suffered in the course of production, (iv) injury to or destruction of tangible property, including the loss of use resulting therefrom; which claim, damage, loss of expense results in whole or in part from any act or omission of Supplier, or any of its subcontractors or employees. (b) In any and all claims against the Indemnities, by any employee of the Supplier, any subcontractor of Supplier or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this indemnification provision shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefits, payable by or for the Supplier or any subcontractor under any statutes or regulations relating to workers compensation disability benefits or other employee benefits.

12. Limit of Damages: All liability arising under this T&C, whether under contract, tort (including negligence), or otherwise arising, shall be limited to direct damages.

13. Assignment of Contract: Supplier agrees to hold the terms, elements and material, including Digital Content, produced under this T&C in strict confidence and shall not use outside of this T&C or disclose the terms, elements and materials, including Digital Content, to any third party without Purchaser's prior written consent. Supplier further agrees to hold in strict confidence all information and materials supplied by the Purchaser or the Client to Supplier hereunder.