

ABC - Terms and Conditions - 2016.

1. The following words and phrases shall have the meanings assigned below:-

"The Agreement" means the agreement set out overleaf and in these Terms and Conditions and the Appendices"

"The Balloon" means the hot-air balloon specified at clause 1 of the Agreement, or any replacement balloon

"The Equipment" means the hot air balloon envelope, or any replacement equipment

"The Programme" means any Events agreed to by the parties from time to time during the Term

"Event" means an occasion within the Programme in which Customer has arranged for the Balloon to appear under the management of ABC "Appearance" means attendance of ABC at an Event for the purpose of flying the Balloon by means of and with the Equipment (whether or not visible) including such attendance where due to force majeure a flight in the Balloon is prevented

"The Fee" means those fees set out in clause 2 of the Agreement subject to the Provisions of clause 3 hereof

"The Term" means the period set out in clause 3 of the Agreement, or any part of each period "The Personnel" means ground crew and flying crew of ABC designated to manage the Balloon and the Equipment from time to time

"Interest" means interest upon any sums due to ABC under the Agreement when such sums are not paid on their respective due dates calculated in accordance with the Late Payment of Commercial Debts (Interest) Act 1998

"The Management Services" means those services and matters set out in clause 2

"Force Majeure" means any circumstance beyond the control of ABC including without limitation adverse weather conditions, technical or other failure or the intervention by some competent authority

2. During the Term ABC undertakes to the Customer to:-

2.1 make Appearances at Events in accordance with the Programme;

2.2 advise the Customer in writing in relation to the Programme and its implementation and any additional Events to achieve the marketing and public relations objectives of the customer relative to the location of the Events take place;

2.3 if requested by the Customer to use its reasonable commercial endeavours to provide a press and public relations service in conjunction with the Customer or its duly appointed authorized representative in the country where the Event takes place provided that any such press and public relations service and/or releases are only implemented and/or released with the prior consent of the Customer or its duly authorized representative

2.4 keep, store, clean and maintain the Balloon and the Equipment in a good, serviceable and safe condition and to ensure that it complies at all times with the relevant safety requirements determined from time to time by any competent and relevant authority;

2.5 supply the Personnel for an Event taking into account the Customer's reasonable request for certain members of the Personnel to attend a particular Event and to ensure that the Personnel conduct themselves at all times in a respectable and professional manner commensurate with the marketing and public relations objectives of the Customer;

2.6 advise the Customer of the need or desirability of purchasing any equipment additional to the Equipment or any replacements thereof;

- 2.7 use its best endeavours to ensure in advance that the location of each Event will not impede the performance by ABC of its obligations hereunder;
 - 2.8 use its best endeavours to assist the Customer in fulfilling its marketing and public relations objectives at an Event and accordingly to comply with the Customer's reasonable requests in respect thereof;
 - 2.9 prepare a periodic activity report detailing all services provided pursuant to its obligations hereunder;
 - 2.10 ensure that it will at all times comply with the requirements of the Civil Aviation Authority and any other relevant and competent authority whose consent is required within the country of operation in respect of any Apparatus and will obtain any necessary permits, licences or similar forms of authority related to the Apparatus and will comply with all applicable laws;
 - 2.11 ensure that all Personnel who transport, set up, fly or dismantle the Balloon and Equipment are qualified to do so and have been adequately trained;
 - 2.12 be fully responsible for the safety of the Personnel referred to in 2.11 above;
3. The Fees -
- 3.1 shall be paid by the Customer to ABC within 30 days of the date of the invoice rendered by ABC from time to time to the Customer. Time for payment is of the essence;
 - 3.2 relates to operations contained in the Programme within the United Kingdom only. Other activity both within and without the United Kingdom shall be quoted for separately upon a request by the Customer of ABC to do so;
 - 3.3 shall be increased at any time during the currency of this Agreement in accordance with the commercial pricing policy of ABC from time to time. Any increase to be notified to the Customer 28 days in advance of the date upon which it shall take place;
 - 3.4 an exclusive Value Added Tax or other applicable tax of a like nature, which shall be added to the Fees at the prevailing rate and paid by the Customer;
 - 3.5 shall bear interest be subject to ABC's compensation for debt recovery costs in accordance with The Law Payments of Commercial Debts (Interest) Act 1998 if paid later than the time stated in clause 3.1;
 - 3.6 Subject to the availability of the Balloon and the Equipment and with the prior written consent of the Customer ABC shall use the Balloon and the Equipment at its own expense for pleasure and display at shows, fairs, exhibitions, events and other occasions whereupon the provisions of the Agreement shall in so far as relevant apply and herein shall indemnify the Customer from and against all liability, damages, costs, claims or expenses of any kind in respect of such use and ABC shall remain at its own cost any damage to the Balloon and/or Equipment caused during the course of such use;
4. The Customer undertakes to ABC -
- 4.1 not to use any other person, firm or company for the purposes of providing services such as the Management Services or anything similar thereto during the Term;
 - 4.2 to indemnify ABC against any loss it may suffer as the result of any civil claims or proceedings brought against ABC based upon any advertising and other work prepared for the Customer by ABC and approved by the Customer either orally or in writing prior to its publication;
 - 4.3 that all intellectual property rights required in connection with the display of artwork created by the Customer for use in connection with the Balloon and/or the Equipment are in full force and effect and are owned in and beneficially owned by the Customer and the Customer shall keep ABC fully indemnified in respect of any breach of this undertaking;

5.4 that it has full power and authority to enter into the Agreement and that such act does not contravene the provisions of the Memorandum and Articles of Association of the Customer

5.5 that it will forthwith upon a request by ABC authorize the acquisition of all new and replacement equipment for use in connection with or in substitution for the Equipment including the Ballroom and any repairs required in relation thereto in order to enable ABC to carry out the Management Services during the Term

5.6 that it and its employees, officers, members, agents and sub-contractors will at all times during an Event observe and comply with all orders from time to time issued by the Personnel or any member thereof and the Customer further acknowledges and accepts that the Personnel have complete discretion concerning the load and passengers to be carried in the Ballroom and as to whether or not a flight shall be undertaken and that the decision of the pilot of the Ballroom and of any other member of the Personnel shall be final and binding

5.7 that it will indemnify ABC against all and any claims, losses, costs, penalties, damages and expenses whatsoever and howsoever arising by virtue of the Customer, its employees, officers, members, agents and sub-contractors failing to comply with the obligations of the Customer under the Agreement

6. In the event that:-

6.1 either of the parties convenes a meeting of its creditors for the purpose of considering a resolution for winding up other than for the purposes of and followed by a reconstruction or amalgamation or a compulsory winding up order other than one which the relevant party demonstrates to the reasonable satisfaction of the other to have been applied for fraudulently or wrongfully and which is dismissed within 14 days of being granted is made; or

6.2 an encumbrancer takes possession of or a receiver is appointed in respect of all or a substantial part of the assets of either party;

6.3 compounds with or convenes a meeting of its creditors

6.4 is unable to pay its debts or ceases for any reason to carry all business or suffers any similar action which in the opinion of the other party means that it may be unable to pay its debts then in any such case such event shall constitute a repudiation of the Agreement by the party suffering the event and the other party may by written notice terminate the Agreement without prejudice to any other rights and remedies which it may have immediately terminate the Agreement

7. Either party may forthwith terminate the Agreement by notice given to the other party in the event of the other party admitting a material breach of any of the terms of the Agreement which is not remediable or if remediable is not remedied within 14 days after notice of the default requiring its remedy has been given by the party in breach as demanded

8. In the event of the Agreement being determined whether by effluxion of time, notice or otherwise then:-

8.1 the Equipment available to the Customer the Ballroom and the Equipment;

8.2 the Customer shall account to ABC for all arrears of the Fees;

9. In the event that:-

9.1 ABC fails (other than for a reason of Force Majeure) to perform its obligations hereunder then it shall account to the Customer by way of damages for that part of the Fees which represent that part of the Management Services the subject of the default failure. Provided that ABC shall not be liable for any consequential losses, costs or damages sustained by the Customer as a result of the aforesaid failure

9.2 ABC fails (whether by reason of Force Majeure or otherwise) to make an Appearance or otherwise arrives so late that the marketing and public relations objectives of the Customer cannot be achieved as that Appearance then with the approval of the Customer ABC shall use its best endeavours to arrange for an additional appearance at an Event in lieu of the Appearance so missed and accordingly ABC shall not be liable to the Customer for the Appearance so missed.

10. All notices given under this Agreement shall be in writing and may be sent by personal delivery, by recorded delivery post, facsimile transmission or to the party to which such notice is being given to the following addresses or facsimile numbers or such addresses as may be or notified.

10.2 A notice will be duly given when personally delivered or if sent by facsimile when the correct answer back is received, or 72 hours after despatch by recorded delivery post.

11. Neither party shall be entitled to assign to any other party its respective rights and interests (for any of them) under this Agreement provided that either party may assign such rights and interest (for any of them) to any company which is a subsidiary of its ultimate holding company.

12. Nothing in this Agreement shall constitute or be deemed to constitute a partnership between AIC and the Customer.

13. Whenever this Agreement requires that one party must obtain the previous agreement of the other party in any matter, this such agreement from one other must be previously obtained in writing, where it will become an agreement properly hereunder.

14. No failure by either party hereto to exercise any power given to it under this Agreement or to take any step or compliance by the other Party hereto with any obligation or condition of this Agreement and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of any of the respective rights of the parties hereto under the Agreement.

15. No waiver by either party hereto of any particular default by the other party shall effect or impair rights of the party not in default in respect of any subsequent default hereby kind by the defaulting party, nor shall any delay or omission of the party not in default to exercise any rights arising from any default affect or impair the rights of the party not in default in respect of the said default or any other default of the defaulting party under the Agreement. No delay or omission of any payments by either party hereto shall not be deemed a waiver of any proceeds or breach by the defaulting party of any of the terms, covenants or conditions of the Agreement.

16. The Agreement shall constitute the entire agreement and arrangement between the parties hereto relating to the subject matter and all previous agreements between the parties hereto and all previous arrangements and agreements relating to the subject matter of the Agreement are hereby discharged. The parties hereto agree that they have not entered into the Agreement upon the reliance of any representations or warranties made by either party. No subsequent change or modification hereto shall be valid unless in writing and signed by both parties.

17. The Agreement shall be governed by and construed in accordance with English Law and the parties hereto agree to submit to the non-exclusive jurisdiction of the English courts.

18. Other than as may be required by any applicable law, government order or regulation or by order or decree of any court of competent jurisdiction, the parties hereto shall and shall prevent their respective agents, employees, officers, directors, representatives, agents, servants, contractors, subcontractors, consultants, the firm and shall not disclose the terms and conditions of the Agreement to any third party (other than the other party) without the prior written consent of the other party. Each of the parties hereto shall be deemed to have obtained the prior consent of the other party. Breach of this clause shall be deemed to be a material breach of the Agreement.

19. Nothing in this Agreement is intended to confer on any person any right to enforce any terms of it, which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.