

Terms and Conditions

The following Terms and Conditions apply to all products produced by Shot Blast Media Limited collectively referred to in this document as 'Shot Blast'. All work is carried out by Shot Blast and is done so on the understanding that the Client has agreed to the Company Terms and Conditions as set out below.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.
Client's Equipment: any equipment, systems, cabling or facilities provided by the Client and used directly or indirectly in the supply of the Services.
Data Protection Legislation: (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.
Deliverables: all Documents, photographs, videos, digital media, products and materials developed by Shot Blast or its agents, subcontractors, consultants and employees in relation to the Services in any form, including, computer programs, motion graphics, design, video scribing, animation, 3D designs, data, reports and specifications (including drafts).
Document: includes, in addition to any document in writing, any photographs, videos, digital media, drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.
In-put Material: all Documents, information and materials provided by the Client relating to the Services, including computer programs, motion graphics, design, video scribing, animation, 3D designs, data, reports, video footage, photographs, graphics and specifications.
Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Pre-existing Materials: all Documents, information and materials provided by Shot Blast relating to the Services which existed prior to the commencement of this agreement, including computer programs, data, reports and specifications.
Project: the project as described in the Proposal.
Project Milestones: a date by which a part of the Project is estimated to be completed, as set out in the Proposal.
Proposal: the packages detailed on the Shot Blast Media website, detailing the Deliverables, Services and related costs to the Client.
Services: the services to be provided by Shot Blast under this agreement as set out in the Proposal, together with any other services which Shot Blast provides or agrees to provide to the Client.
Shot Blast's Equipment: any equipment, including tools, systems, cabling or facilities, provided by Shot Blast or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Client.
VAT: value added tax chargeable under English law for the time being and any similar additional tax.
- 1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.3 A reference to writing or written includes faxes but not e-mail.
- 1.4 Any obligation in this agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.5 References to clauses and schedules are to the clauses and schedules of this agreement.

2. Basis of Contract

- 2.1 Acceptance of Shot Blast's Terms and Conditions can be made by ticking the box on the online order form. The agreement is entered into at this moment and a contract is formed. The start date of the online order.
 - 2.2 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, arrangements, understandings or agreements between them, whether written or oral, relating to the subject matter of this agreement.
 - 2.3 Each party acknowledges that, in entering into this agreement, it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.
 - 2.4 The Client acknowledges that their data may be used by consultants and any outsourced companies employed by Shot Blast to deliver the Services and/or Project.
 - 2.5 Nothing in this clause shall limit or exclude any liability for fraud.
- #### 3. Shot Blast's obligations
- 3.1 Shot Blast shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance with the Proposal in all material respects, using reasonable care and skill.
 - 3.2 Shot Blast shall use reasonable endeavours to meet Project Milestones specified in the Proposal, but any such dates shall be estimates only and time for performance by Shot Blast shall not be of the essence of this agreement.
 - 3.3 Shot Blast shall manage and complete the Project and perform the Services in accordance with the Project Milestones and the other provisions of this agreement.
 - 3.4 Without affecting the foregoing, Shot Blast shall allocate sufficient resources to the Project to enable it to comply with this obligation.
 - 3.5 Shot Blast reserves the right to amend any Services if required to comply with the law.
 - 3.6 Shot Blast has sought legal guidance on the content of the Deliverables from SCE Solicitors Limited however such advice was for the purposes of providing generic video content in respect of the return to work guidance during Covid-19 provided by the government and Shot Blast does not accept any responsibility, loss or liability (in law, contract, tort or otherwise) for the applicability of the guidance onto any specific business. Shot Blast expect the Client to seek independent legal advice, where applicable, in respect of the applicability of the content to its business.

4. Client's obligations

- 4.1 The Client shall:
 - (a) co-operate with Shot Blast in all matters relating to the Services and appoint the Client's Manager in relation to the Services, who shall have the authority contractually to bind the Client on matters relating to the Services;
 - (b) provide, for Shot Blast, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as required by Shot Blast or any of them;
 - (c) provide, in a timely manner, such In-put Material and other information as Shot Blast may require, and ensure that it is accurate in all material respects;
 - (d) obtain and maintain all necessary licences and consents including from contributors, presenters or third parties and comply with all relevant legislation in relation to the Services, the installation of Shot Blast's Equipment, the use of In-put Material and the use of the Client's Equipment in relation to Shot Blast's Equipment insofar as such licences, consents and legislation relate to the Client's business, premises, staff and equipment, in all cases before the date on which the Services are to start; and
 - (e) where applicable, seek its own independent legal advice to the applicability of the guidance to its business.
- 4.2 If Shot Blast's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Shot Blast shall not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such prevention or delay.
- 4.3 The Client shall be liable to pay to Shot Blast, on demand, all reasonable costs, charges or losses sustained or incurred by Shot Blast (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) that arise directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under this agreement, subject to Shot Blast confirming such costs, charges and losses to the Client in writing.
- 4.4 The Client shall not, without the prior written consent of Shot Blast, at any time from the date of this agreement to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from Shot Blast or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of Shot Blast in the provision of the Services.
- 4.5 The Client shall ensure its terms and brief are complete and accurate, so that Shot Blast can provide the correct Deliverables and Services outlined in the Proposal.

5. Charges and payment

- 5.1 In consideration of the provision of the Services by Shot Blast, the Client shall pay the full amount via PayPal without set-off, counterclaim or reduction. These charges are set out in the Proposal which shall be on a fixed price basis.
- 5.2 Any fixed price and daily rate contained in the Proposal excludes:
 - (a) VAT, which Shot Blast shall add to its invoices at the appropriate rate.
- 5.3 The Client shall pay the full price of the package, in full and in cleared funds, before the work commences.

6. Intellectual property rights

- 6.1 As between the Client and Shot Blast, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by Shot Blast. Subject to clause 6.2, Shot Blast licenses all such rights to the Client free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Client to make reasonable use of the Deliverables and the Services. If this agreement is terminated, this licence will automatically terminate.

7. Limitation of liability

- 7.1 This clause 7 shall survive the termination of the contract. It also sets out the entire financial liability of Shot Blast (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Client in respect of:
 - (a) any breach of this agreement however arising;
 - (b) any use made by the Client of the Services, the Deliverables or any part of them; and
 - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 7.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this agreement.
- 7.3 Nothing in this agreement limits or excludes the liability of Shot Blast:

- (a) for death or personal injury resulting from its negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982.
- 7.4 Subject to clause 6.2 and clause 6.3, Shot Blast shall not under any circumstances whatever be liable for:
- (a) loss of profits; or
 - (b) loss of business; or
 - (c) depletion of goodwill and/or similar losses; or
 - (d) loss of anticipated savings; or
 - (e) loss of goods; or
 - (f) loss of contract; or
 - (g) loss of use; or
 - (h) loss of corruption of data or information; or
 - (i) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- 7.5 Shot Blast'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 this agreement shall in all circumstances be limited to the price paid for the Services.
- 8. Termination**
- 8.1 Subject to clause 8.3, this agreement shall terminate automatically on completion of the Services.
- 8.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this agreement without liability to the other on giving the other not less than 3 months' written notice or immediately on giving notice to the other if:
- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
 - (b) the other party commits a material breach of any of the material terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement; or
 - (d) the other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
 - (e) the other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors; or
 - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; or
 - (g) an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - (h) a floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - (i) a person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
 - (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (d) to clause (j) (inclusive); or
 - (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- 8.3 On termination of this agreement for any reason:
- (a) The Client shall immediately pay to Shot Blast all of Shot Blast's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Shot Blast may submit an invoice at its sole discretion, which shall be payable immediately on receipt;
 - (b) The Client shall, return all of Shot Blast's Equipment, Pre-existing Materials and Deliverables. If the Client fails to do so, then Shot Blast may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping;
 - (c) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination; and
 - (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect, including the following clauses: clause 6 (Intellectual property rights), clause 7 (Limitation of liability), clause 8.3, clause 15 (Governing law and jurisdiction).
- 9. Cancellation and Rescheduling**
- 9.1 For projects on site with pre arranged dates, Shot Blast reserves the right to enforce a cancellation notice. Any missed date, late cancellation, or changed date by the Client without 48 hours notice will result in a charge equal to 100% of the reserved service amount.
- 10. Force majeure**
- 10.1 Shot Blast shall not be liable for loss or damage of whatsoever nature suffered by the Client for failure to carry out the Services by reason of:
- (a) strike, lockout any other labour dispute affecting the employees or agents of Shot Blast all the Client where the effect is to prevent or hinder Shot Blast's employees or agents from performing the Services. However, Shot Blast will not in any circumstances perform any Services, which would be construed to be of a strike breaking nature;
 - (b) any event beyond Shot Blasts control preventing or hindering Shot Blasts employees or agents travelling to the Client premises including but not limited to mechanical breakdown, road traffic congestion adverse weather conditions;
 - (c) war, act of hostile forces, civil disturbance or disruption of public services;
 - (d) the presence of hazards due to defective structure or means of access presence of noxious combustible, explosive or radioactive substances or any other state of the Client's premises rendering them dangerous in Shot Blasts opinion to any employee or agent used or employed by Shot Blast;
 - (e) the failure of the Client to implement any of the guidance or advice given by Shot Blast regarding any issues relating to data protection;
 - (f) any failure of the Client to comply with the terms of this agreement;
 - (g) acts of God, flood, drought, earthquake or other natural disaster epidemic or pandemic;
 - (h) terrorist attack, civil war, civil commotion rights, war, threat of or preparation for war;
 - (i) any law or any action taken by government or public authority;
 - (j) interruption of failure of utility service.
- 10.2 If the force majeure event prevents should Shot Blast from providing any of the Services for more than 8-weeks, Shot Blast shall, without limiting its other rights or remedies, have the right to terminate this agreement immediately by giving written notice to the Client.
- 10.3 Neither party shall be in breach of this agreement or liable for delay in performing, or failure to form, any of its obligations under this contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 11. Severance**
- 11.1 If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
- 11.2 If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12. Assignment**
- 12.1 The Client shall not, without the prior written consent of Shot Blast, assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 12.2 Shot Blast may at any time assign, transfer, charge, mortgage, subcontract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 12.3 Each party that has rights under this agreement is acting on its own behalf and not for the benefit of another person.
- 13. No partnership or agency**
- Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14. Non-Solicitation**
- 14.1 The Client agrees that it will not, during the period of the agreement, nor within 12 months of its termination for whatever reason solicit the services of or employed in any capacity, either full or part-time, any employee of Shot Blast.
- 14.2 Without prejudice to any rights or remedies that Shot Blast may have, the Client acknowledges and agrees that Shot Blasts business may be damaged by the Client breaching this clause and the Client acknowledges and accepts that damages would be an adequate remedy for such a breach. Prejudice to the generality of the foregoing, Shot Blast estimates that its losses for such breach be at least £10,000 in respect of each employee solicited by the Client in breach of this clause and the Client acknowledges and accepts that Shot Blast will use all reasonable endeavours to seek such sum as damages in the event of such breach by the Client.

14.3 This clause shall survive the termination of the agreement howsoever caused.

15. Rights of third parties

15.1 The Client shall not allow any third-party to access, edit or otherwise deal with the Deliverables and Pre-existing Materials.

15.2 A person who is not a party to this agreement shall not have any rights under or in connection with it for sake of completeness the operation of the Contract (Rights of Third Parties) Act 1999 is excluded.

16. Notices

16.1 Any notice to be given under the agreement shall be in writing and may be served by personal delivery, first class recorded or, e-mail to the address of the relevant party.

16.2 Notices served as above shall be deemed served on the weekday of delivery provided delivery is before 5.00pm on a weekday. Otherwise delivery shall be deemed to occur on the next weekday. An email shall be deemed delivered when sent unless an error message is received.

17. Governing law and jurisdiction

17.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

17.2 The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

18. Data Protection

18.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

18.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and the Provider is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). The Schedule below sets out the scope, nature and purpose of processing by the Provider, the duration of the processing and the types of personal data (as defined in the Data Protection Legislation, **Personal Data**) and categories of Data Subject.

18.3 Without prejudice to the generality of clause 17.1, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider for the duration and purposes of this agreement.

18.4 Without prejudice to the generality of clause 17.1, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under this agreement:

(a) process that Personal Data only on the written instructions of the Client unless the Provider is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Provider to process Personal Data (**Applicable Laws**). Where the Provider is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Client;

(b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(i) the Client or the Provider has provided appropriate safeguards in relation to the transfer;

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) the Provider complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

(e) assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

(f) notify the Client without undue delay on becoming aware of a Personal Data breach;

(g) at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and

(h) maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Client or the Client's designated auditor.

18.5 The Client does not consent to the Provider appointing any third party processor of Personal Data under this agreement.

19. The Schedule

Processing, Personal Data and Data Subjects

19.1 Processing by the Provider

Scope

The provider collects individual data from the Client in a number of ways using human intervention and technology, including using hardware, software, by people collecting and recording data, by mobile devices and by electronic communications.

Nature

The provider processes and stores individual data received from the client electronically by Google, Trello and Xero.

19.2 Purpose of Processing

To fulfil the contractual obligations with the Client by providing creative production services.

19.3 Duration of the Processing

For the term or remaining term set out in the contract between the parties.

Types of Personal Data

Name, surname, title, role, email, telephone, address

Categories of Data Subject

Employees, workers, contractors and individual customers of the Client.