



BRND WGN

Terms and Conditions

Date: 24/02/2024

Version: 6.20240323

Compiled by: Gareth Sciberras, Partner, BRND WGN

© BRND WGN CO LTD. THIS DOCUMENT IS CONFIDENTIAL AND ITS CIRCULATION, USE AND/OR REPRODUCTION IN WHOLE OR IN PART ARE RESTRICTED.



**BRND
WGN**

Terms and Conditions

BRND WGN Co Ltd is a limited liability company incorporated and existing under the laws of Malta which provides strategy, design, digital, marketing, social media, media and project management services to third parties.

A third party seeking to make use of one or more of the services provided by BRND WGN Co Ltd, must, before entering into negotiations with the latter for the provision of such service/s, sign these Terms and Conditions.

1. Definitions

In the context of these Terms and Conditions, the following terms shall have the meanings assigned to them hereunder:

- 1.1. **'BRND WGN'** shall mean BRND WGN Co Ltd
- 1.2. **'Client'** shall mean the third party having entered into negotiations with BRND WGN Co Ltd with a view to make use of the Services, or which is currently making use of the Services;
- 1.3. **'Expenses'** shall mean the out-of-pocket expenses, including but not limited to travel, accommodation abroad, communication, booking fees, props, third party fees, which shall have been incurred by BRND WGN for the purpose of fulfilling the Services or on behalf of the Client, as shall be duly invoiced by BRND WGN;
- 1.4. **'Fees'** shall mean the fees which are decided upon and chargeable by BRND WGN and payable by the Client for the provision of the Services, as shall be duly invoiced by BRND WGN;
- 1.5. **'Force Majeure Event'** means an event beyond the reasonable control of BRND WGN, which inter alia shall include any act of God, inclement weather, flood, drought, lightning or fire, earthquakes and volcanic eruptions, failure or shortage of power supply, strikes, lockouts, labour disturbances and industrial disputes of any kind, Government control, restrictions or prohibitions or any other Government act or omission whether local or national, any act or omission of any regulatory or other public authorities or agencies, war, military operations and riots, difficulties, delays or interruptions in the production or supply of equipment used in the Service, act or default of any supplier, agent or subcontractor, or any other similar or dissimilar causes beyond BRND WGN reasonable control;
- 1.6. **'Final Artwork'** shall mean the artwork that the third party has approved as a completed artwork, and wishes to take delivery of, inclusive of all Intellectual Property Rights therein that have been assigned by BRND WGN to the third party pursuant to this Agreement;
- 1.7. **'Initial Brief'** shall mean the preliminary information and instructions given by the Client to BRND WGN regarding the Project;

- 1.8. **'Intellectual Property Rights'** shall mean all vested, existent, contingent and future rights of copyright and all rights in the nature of copyright and all accrued rights of action and all other rights of whatever nature whether registered or unregistered, including but not limited to trade mark, service mark, design and patent rights, in and to all the works (including but not limited to the Final Artwork) commissioned by Client pursuant to this Agreement (the **'Works'**) whether now known or in the future created to which BRND WGN at this present moment in time or at any time after the date of this Agreement may be entitled by virtue of or pursuant to any of the laws in force in each and every part of the world.
- 1.9. **'Payments'** means any amount due by the Client to BRND WGN in respect of Expenses and/or Fees;
- 1.10. **'Proposal'** shall mean the initial design, concept, and/or plan presented to the Client for its approval by BRND WGN following the Initial Brief for the Project;
- 1.11. **'Project/s'** The products and, or service/s offered by BRND WGN to the Client, which include inter alia, business strategy consultancy, branding services, website design and development, backend technology development, and/or campaign and media strategy.
- 1.12. **'Services'** shall mean the strategy, design & technology services provided by BRND WGN to the Client.

2. Engagement

- 2.1. The Client engages BRND WGN to provide the Services in return for the Payments.
- 2.2. BRND WGN undertakes and binds itself in favour of the Client to provide and fulfill the Services diligently.

3. Quotes, Invoices, and Purchase Orders

- 3.1. Quotes are based on BRND WGN's knowledge and understanding of the Client's requirements as communicated during the Initial Brief, and/or via later communications:

Provided that, if BRND WGN, by any means becomes aware that the Project varies significantly from such knowledge and understanding, affecting the delivery schedule and/or the quote for the Project, it shall inform the Client and/or issue a new quote including any additional Fees and/or Expenses.

- 3.2. The information contained within quotes is valid for a period of 30 days following the date of issue thereof, unless otherwise specified.

- 3.3. Unless otherwise stated, all prices quoted exclude VAT, stock imagery, stock video, photography, font licenses, software licenses and any other out-of-pocket expenses.
- 3.4. A quote which has been approved by the Client, in writing, by email or through an automated system, as the case may be, shall be binding on both the Client and on BRND WGN.
- 3.5. BRND WGN is entitled to presume that the Client has accepted the quote once the Client begins to brief/communicate or request work to start on a specific project.
- 3.6. All invoices shall be payable in full within 30 days of issue by BRND WGN, unless otherwise specified.
- 3.7. Where the Client operates a specified ordering system it agrees to notify BRND WGN of the relevant details at the time purchase orders are placed. It agrees to provide BRND WGN with all the relevant details to enable BRND WGN to comply with the system. Similarly if the Client subsequently introduces a new or revised ordering system it agrees to notify BRND WGN in writing immediately. In the event that the Client does not notify BRND WGN of any such new system, BRND WGN is entitled to regard orders placed or in the system as being subject to the same ordering system previously in operation. Failure by BRND WGN to comply with an ordering system for work that BRND WGN has undertaken in good faith shall not be construed as a valid reason for withholding payment.

4. Creative Services

- 4.1. The Fees quoted for in respect of creative services (including by not limited to design and naming) for the Project are inclusive of (2) two rounds of changes and one set of Final Artwork in Print Ready (PDF) format in respect of design services. Where further changes are requested, BRND WGN shall issue a new quote which must be accepted by the Client prior to such changes being effected.
- 4.2. Where BRND WGN has provided design services to the Client, the originating working files can be provided upon request by the Client at an additional cost to be decided by BRND WGN in its sole discretion.
- 4.3. Where BRND WGN has provided design services to the Client and, following the approval of the Final Artwork, further changes are requested, BRND WGN shall issue a new quote for such changes to be accepted by the Client prior to such changes being effected.

5. Fees, Expenses and Payments

- 5.1. BRND WGN shall in its sole discretion determine the Fees.
- 5.2. Fees quoted are based upon work performed during regular working hours (based on a thirty five (35) hour week from Monday to Friday, from 8.30 to 17.30 excluding Public Holidays and Annual Service Provider Shutdown [notice of which will be given ninety (90) days in advance of such shutdown]). For services required to be performed outside regular working hours, the Service Provider at its own discretion, but with prior approval of the Client, may charge a surcharge based on a multiple of one and a half (1.5) times the agreed base rate for the service provided. Such surcharge hours are to be absorbed from the pre-allocated retainer hours for the month in which the service is provided.
- 5.3. BRND WGN shall have the right to charge a mark-up on Expenses to be decided by BRND WGN in its sole discretion.
- 5.4. All Expenses and Fees as invoiced by BRND WGN are exclusive of VAT and other duties or taxes, unless otherwise stated.
- 5.5. Any VAT or other duties or taxes payable in respect of the Expenses and Fees shall be payable by the Client.
- 5.6. The Client undertakes and binds itself to make the Payments punctually.
- 5.7. Payments shall be made by the Client either by bank transfer or cheque without deduction or set-off and in immediately clear and available funds free of all bank charges. Cheques shall be made payable to "BRND WGN Co Ltd", unless otherwise specified. Bank transfers shall be made to BRND WGN's bank details as set out hereunder:
- Bank:** Bank of Valletta
Beneficiary: BRND WGN Co Ltd
Current Account number: 40016926387
SWIFT: VALLMTMT
IBAN: MT50VALL22013000000040016926387
- 5.8. If Fees or Expenses due to BRND WGN in relation to the Project are in arrears for more than thirty (30) days after the due date, BRND WGN reserves the right, without prejudice to any other right or remedy available to it under these terms and conditions, or at law, to charge interest on such overdue sum from the original due date until paid in full at a rate of 6% per annum.
- 5.9. Payments made by the Client shall be applied first to the reduction or discharge of any interest accrued in favour of BRND WGN, second to the reduction or discharge of outstanding Payments, thereafter to any other amounts due by the Client to BRND WGN.

- 5.10. Any claim for Payments that are due by the Client shall be deemed to be a certain, liquid and due debt and may be enforced by BRND WGN by any means or procedure competent to it at law.
- 5.11. All goods, material and equipment provided by the Service Provider in relation to the Project shall remain the property of the Service Provider until paid for in full by the Client.

6. Project Communication

- 6.1. During the course of the Project, BRND WGN shall be entitled to request any clarifications, instructions, information and/or confirmations from the Client.
- 6.2. BRND WGN shall be entitled to rely on any instructions and/or other information, whether written or not, furnished by the Client, and to act on the basis thereof.
- 6.3. The Client shall be required to punctually provide information and/or instructions to BRND WGN, whether written or otherwise, that may be required in relation to the Services.
- 6.4. The Client shall furthermore be required to communicate information and/or instructions to the BRND WGN in writing at the request of the latter.
- 6.5. BRND WGN shall not be held responsible for any loss or damage arising from errors, delays or failure in transmission or from any ambiguity or inaccuracy of any information and/or instructions communicated by the Client.
- 6.6. Where the Client fails to provide information and/or instructions in relation to the Services and continues in such default for a continuous period of thirty (30) days after BRND WGN's notification thereof, BRND WGN may, at its sole discretion and without observing any formality, choose to archive the Project and cease to provide the Services, at which point all Fees and Expenses related to the Project shall become due and payable.
- 6.7. Twelve (12) months following the conclusion of any Project, the files relating to such Project may be archived. Following archiving of the Project that has been concluded twelve (12) months or more before, BRND WGN may, at the Client's request, reopen the Project file subject to an unarchiving fee to be mutually agreed by both parties.

7. Authorisation

- 7.1. BRND WGN is entitled to presume that the Client has given due authorisation and power to its representatives, agents and/or affiliated parties to provide instructions and/or information to BRND WGN and/or place orders on the Client's behalf, unless otherwise informed by the Client.
- 7.2. The Client shall notify BRND WGN of any cessation of authorisation of representatives, agents and/or affiliated parties of the Client to provide instructions and/or information to BRND WGN and/or place orders on the Client's behalf.
- 7.3. Once BRND WGN has been notified of such cessation of authorisation, it shall suspend any Project which has been commenced on the instruction of the relevant representative, agent or party until further instruction from the Client. All Fees and Expenses in relation to such project shall become immediately due and payable upon such notification.

8. Confirmation and Approval

- 8.1. Where applicable, the Client shall be required to check and confirm all work produced by BRND WGN before it goes to output/print. Once work has been approved in this manner, BRND WGN shall not be responsible for any anomaly or mistake in the work.
- 8.2. The Client shall be deemed to accept the completed Project unless it notifies BRND WGN within five (5) days of receipt that it is unacceptable. Such notification must be in writing setting out clearly the reasons why the Project is unacceptable. Where applicable, the Client agrees not to use the Project it has deemed unacceptable but to return it immediately to BRND WGN.
- 8.3. Where the Client notifies BRND WGN that the Project is unacceptable, and where applicable returns the Project, in the manner described above, BRND WGN shall, at its sole discretion, either return the Project and demand full payment if this has not been made, or, if it agrees that the Project is unacceptable, amend it within a period of thirty (30) days from the date of the Client's notification, or within a different period to be agreed upon between the Client and BRND WGN.

9. Third Party Services

- 9.1. The Client grants BRND WGN the authority to procure third party services on its behalf for the purpose of completing the Project, and all acts performed by BRND WGN for such purpose shall be valid and binding on the Client.

- 9.2. BRND WGN shall not be responsible for the cost, quality, workmanship, condition, accuracy or appearance of services procured on Client's behalf.
- 9.3. All expenses related to media booking costs are subject to the terms and conditions of the respective media and exclude artwork costs unless otherwise stated.
- 9.4. All purchases of media, production costs, and engagement of talent will be subject to Client's prior approval. Client reserves the right to cancel any such authorisation, whereupon Service Provider will take all appropriate steps to effect such cancellation, provided that Client will hold Service Provider harmless with respect to any costs incurred by Service Provider as a result.
- 9.5. All Media, production costs or any other 3rd party services shall be purchased by the client in accordance with this Agreement. Client therefore agrees to be solely liable of such purchase. However, should the client request Service Provider to purchase media, production costs or any other 3rd party services on its behalf, Client agrees that Service Provider shall be held solely liable for payments only to the extent proceeds have cleared from Client to Service Provider for such purchase; otherwise. Service Provider will use its best efforts to obtain agreement by the 3rd party to Sequential Liability.

10. Intellectual Property

- 10.1. BRND WGN shall retain ownership of the relevant patent, trade name or trademark, copyright and/or other intellectual property right, as may be the case, of any artwork, written work, material, systems and/or software, unless full payment by the Client of all undisputed Fees and Expenses in respect of the relative artwork, written work, material, systems and/or software has been made;
- 10.2. Provided further that BRND WGN shall in any such case retain the right to utilise any artwork, written work, material, system and/or software from the Project for the purposes of its own advertising, promotion, and/or marketing purposes, such as on its own website, or on other websites and/or forums.
- 10.3. All artwork, designs, edits, revisions and work product, created for the purpose of the Project, other than the Final Artwork, and any written work, material, system and/or software not constituting the completed Project shall remain the property of BRND WGN. Use of these by the Client is strictly prohibited without written, prior permission by BRND WGN.
- 10.4. BRND WGN waives any and all moral rights which it may have now or in the future in the Works.

11. Ownership of files

- 11.1. Provided that a Project has been fully paid for and subject to the above, the ownership of the final project artwork files will belong to the Client. A copy of the project files is to be delivered to the Client once full payment is effected. For the avoidance of doubt, BRND WGN will retain an archived copy of the files for twelve (12) months following the completion of the Project. BRND WGN reserves the right to delete the archived final project artwork files after 12 months of completion. Should the Client request such project files, the Client is requested to provide BRND WGN with the necessary hardware to store such files.
- 11.2. An unarchiving fee to be decided in the sole discretion of the Service Provider shall apply should the Client require unarchiving.

12. Warranty of Originality

- 12.1. The Service Provider warrants and represents that:
- 12.1.1. it has full authority to enter into negotiations with the Client for the completion of the Project;
- 12.1.2. to the best of its knowledge, the Project delivered or to be delivered to the Client is/will be original and has not/will not have been previously published, replicated, copied or a modification of previously published work in the public domain, and that consent to use the Project, has been obtained on an unlimited basis from relevant third parties, and that the Project is not in breach of any third party intellectual property, howsoever defined.
- 12.1.3. Notwithstanding the above Clause 12.1.2, the Client remains solely responsible for ensuring that any deliverables and/or materials associated with the Project which are implemented by the Client, such as new brand names and logos, are not in breach of any third party intellectual property rights. BRND WGN shall not be held liable for any claim, direct or otherwise, in relation to any breach or infringement of intellectual property rights for any such deliverables and/or materials associated with the Project. For the avoidance of doubt, the Parties hereby agree that it shall be the sole and exclusive responsibility of the Client to carry out or commission any searches in the relevant intellectual property registers, both local and overseas, to avoid a breach or infringement. Moreover, the registration of any trademarks associated with the Project remains the sole responsibility of the Client.

13. Confidentiality

- 13.1. All trade, business, operational or professional information (other than information in the public domain) (hereinafter referred to as "Confidential Information") given to BRND WGN or to its employees by the Client, or to the Client or to its employees by BRND WGN in any form (including verbally), shall remain the property of the party giving that information, be treated as confidential, not be disclosed to third party and shall be subject to all customary confidentiality obligations.
- 13.2. BRND WGN and the Client mutually bind themselves to use all reasonable means to prevent the disclosure of any Confidential Information (other than information in the public domain) relating to the other party, to any third party, or to any of its employees or agents, other than as required to carry out the Project. Without prejudice to the above, the parties bind themselves to permit access to any Confidential Information only to those of their employees or authorised representatives having a need to know and who are informed of the confidentiality obligations concerning such Confidential Information and who agree to be bound by a written confidentiality agreement or are otherwise bound by confidentiality obligations.
- 13.3. Unless specifically agreed by both parties, both BRND WGN and Client shall undertake not to disclose to any third parties any information or data acquired in connection with this Agreement unless required to do so by a Court of Law or legitimate regulatory authority, nor to duplicate, use or permit the use of any such data otherwise than in connection with this Agreement and the operation thereof.
- 13.4. The parties warrant and bind themselves in favour of each other to fully indemnify and keep the other party harmless from any costs, losses or expenses arising from any wrongful use, duplication or disclosure of any data obtained pursuant to this Agreement and the operation thereof.
- 13.5. Both parties shall at the termination or conclusion of this engagement return to the other party all documents or material of any kind containing Confidential Information together with all copies of such material relating to this Agreement which are then in their possession or control.
- 13.6. This clause shall survive termination of this Agreement, for whatever cause.

14. Data Protection

- 14.1. In addition to anything else agreed between them, the Client as the data controller and BRND WGN as the data processor, undertake to comply with the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) – the 'GDPR'.
- 14.2. The type of personal data that BRND WGN shall process pursuant to this engagement may include images (including but not limited to profile photos and/or incidental depictions of data subjects as part of crowd shots), social media profiles and/or other basic details (such as the name and contact details) of employees, client customers and possibly other data subjects.
- 14.3. In view of its obligations under the GDPR, BRND WGN (acting as a data processor in terms of this Agreement and any other agreement with the Client involving any processing of personal data) shall:
- 14.3.1. Act only upon the strict instructions of the Client (the data controller) and not process any personal data that may be transferred to it by the Client except as may be necessary for the performance of any service or task provided by BRND WGN to/for the Client and, in particular, to process the said personal data only on documented instructions from the Client, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by EU or Maltese law. In such a case, BRND WGN shall inform the Client of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - 14.3.2. Ensure that persons authorised to process the personal data (including but not limited to BRND WGN's employees) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - 14.3.3. Implement appropriate technical and organisational measures to protect any personal data that may be processed on behalf of the Client (if any) against accidental destruction or loss or unlawful forms of processing thereby providing the best possible level of security appropriate to the particular risks in question and take any other such measures as required by BRND WGN's direct obligations as a data processor in terms of Article 32 of the GDPR;

- 14.3.4. Not engage another data processor without prior specific or general written authorisation of the Client. In the case of general written authorisation, BRND WGN shall inform the Client of any intended changes concerning the addition or replacement of other processors, thereby giving the Client the opportunity to object to such changes. Where BRND WGN engages another processor for carrying out specific processing activities on behalf of the Client (as authorised by the Client), the same data protection obligations as set out in this Agreement shall be imposed on that other processor or sub-processor by way of a contract or other legal act under EU or Maltese law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. Where that other processor or sub-processor fails to fulfil its data protection obligations, BRND WGN shall remain fully liable to the Client for the performance of that other processor or sub-processor's obligations;
- 14.3.5. Assist the Client by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR, taking into account the nature of the processing;
- 14.3.6. Assist the Client in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR (security obligations, notification of personal data breach to the supervisory authority obligation, communication of a personal data breach to the data subject obligation, data protection impact assessment obligation and prior consultation with the supervisory authority obligation) taking into account the nature of processing and the information available to BRND WGN;
- 14.3.7. In any case, immediately inform the Client of any personal data breach as understood by the GDPR, whether or not the breach was caused by BRND WGN;
- 14.3.8. At the choice of the Client, delete or return all the personal data to the Client after the end of the provision of services relating to processing, and delete existing copies unless EU or Maltese law requires storage of the personal data;
- 14.3.9. Make available to the Client all information necessary to demonstrate compliance with the obligations laid down in this Clause 13 and in the applicable data protection law(s) and allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client. In this regard, BRND WGN shall immediately inform the Client if, in its opinion, an instruction infringes the GDPR or other EU or Maltese data protection provisions;

14.3.10. Take all such measures necessary to ensure that processing will meet the requirements of the GDPR and ensure the protection of the rights of data subjects.

14.4. Notwithstanding anything else agreed between the Parties in this Agreement or any other agreement involving processing of personal data, BRND WGN shall indemnify the Client and hold the Client harmless from and against all claims, damages, losses, fines or other expenses whatsoever arising from any breach or default in the performance of any data protection obligation(s) on BRND WGN's part to be performed under the terms of this Agreement (and any other agreement with the Client involving processing of personal data) and from and against all reasonable costs, advocates' fees, expenses and liabilities incurred in the defence of any claim or any action or proceeding brought thereon.

15. Indemnity

15.1. Except as otherwise provided in this Agreement, the Client shall indemnify and save harmless BRND WGN, its officers and employees against and from claims, actions, proceedings, costs, fees, taxes, dues, liabilities, penalties, fines and/or expenses, arising from or related to the performance of the Services, except where such claims, actions, proceedings, costs, fees, taxes, dues, liabilities, penalties, fines and/or expenses are the direct result of an act or omission on the part of BRND WGN.

15.2. BRND WGN shall have the right to refuse to rely on any information and/or follow any instructions communicated by the Client, which may be inaccurate, incorrect, misleading, unlawful or unreliable or which if relied upon and/or acted upon by BRND WGN could result in infringement of third party rights, loss or damage or in an illegal or unlawful act.

15.3. In the event that a Client, during a Project, makes use of materials, equipment, software, hardware, programmes, techniques, processes, services and/or other provisions, other than those provided by BRND WGN, or by third parties on the instruction of BRND WGN, the latter shall not be answerable for the cost, quality, workmanship, condition, or appearance of such provisions, or for the outcome of the Project insofar as it is directly related to such provisions.

15.4. Client agrees to indemnify and hold Service Provider harmless with respect to any claims or actions by third parties against Service Provider based upon materials furnished by Client or where material created by Service Provider is substantially changed by Client. Information or data obtained by Service Provider from Client to substantiate claims made in advertising shall be deemed to be "materials furnished by Client."

15.5. Service Provider warrants and binds itself to obtain and have at all times in its favour all permits, licenses, and/or approvals necessary, for the lawful performance of its obligations under this Agreement.

- 15.6. Service Provider warrants and binds itself that any and all persons directly or indirectly engaged or otherwise involved in the carrying out of the Services subject matter of this Agreement shall at all times possess any and all required permits, licenses and/or approvals necessary.
- 15.7. Service Provider acknowledges and agrees that Client shall at all times have the final say about whether to allow any person to be directly or indirectly engaged or otherwise involved in the carrying out of the Services, and that Client shall at all times and for any reason be entitled to request, without incurring any liability, that any person so engaged not be allowed to carry out any action or engagement with respect to this Agreement and/or the Services.
- 15.8. Service Provider warrants and binds itself that every action in connection with this Agreement and the Services subject matter thereof shall be carried out in a proper, transparent and lawful manner and shall not be carried out in breach of any laws, regulations, or rights of any third parties (including but not limited to intellectual property rights).
- 15.9. Service Provider hereby warrants and binds itself to fully indemnify and keep Client harmless in the event that any claims are made or proceedings are instituted against Client in connection with the rights and/or obligations arising out of this Agreement and/or any breach by the Service Provider of any provisions of this Agreement.
- 15.10. In the event that the Service Provider breaches any of the terms and conditions of this Agreement and fails to rectify such breach in accordance with a written notice by Client within fifteen (15) days after the date of such notice, without prejudice to any other right at law or arising out of this Agreement Client may terminate the Agreement at any time thereafter by simple notice in writing without any liability.

16. Conflict of Interest & Exclusivity

- 16.1. BRND WGN will not commence work on similar Project/s for other clients with identical business activities to those of the Client, which are in direct competition with the Client for a period of two (2) months from the completion of each Project. Where the Client causes a delay in the completion of the Project, the original established completion date of such project will be deemed as the date of commencement of the two (2) months non-compete period.

- 16.2. In the event that the Client commits to engage BRND WGN for one or more Project/s in any rolling twelve month period involving fees of one hundred thousand Euro (€100,000) or more, BRND WGN may undertake, for the duration of such Project/s engagement and such reasonable additional period thereafter, as shall be agreed to in writing between BRND WGN and the Client, to refrain from working on similar Project/s for other clients with identical business activities to those of the Client, which business activities are in direct competition with the Client. The parties may negotiate separate terms and durations for specific Project/s based on their nature, value, size, complexity or any other considerations that BRND WGN may consider relevant for the application of such exclusivity.

17. Force Majeure

- 17.1. BRND WGN shall not be deemed to be in breach of its obligations if it prevented from providing the Services by reason of a Force Majeure Event.
- 17.2. In such case it shall give notice to the Client and shall do everything in its power to resume performance.
- 17.3. If the period during which it is prevented from providing the Services due to a Force Majeure Event exceeds ninety (90) days, the Project shall terminate unless otherwise agreed upon by the Parties. Furthermore, in any such event, Client shall, at its sole discretion, be entitled to terminate this Agreement without liability.

18. Termination

- 18.1. The Client and BRND WGN may mutually agree to terminate the Project before completion on terms to be determined in writing.
- 18.2. BRND WGN may, without observing any formality, terminate the Project and cease to provide the Services if the Client fails to make the Payments which have become due and payable.
- 18.3. The Client may terminate the Project if BRND WGN, without justification, fails to provide the Services and continues in such default for a period of 30 days after the Client's notification thereof in writing.
- 18.4. Upon termination of the Project, for whatever reason, the Client shall immediately pay to BRND WGN all arrears of Payments pro rata as at the date of termination of the Project.

19. Non-Solicitation

- 19.1. Each Party acknowledges that the other Party has invested time and resources in the training and improvement of its employees and that such other Party has the legitimate interest to maintain a stable and trained workforce. Accordingly, throughout this engagement, and for twelve (12) months thereafter, neither Party (nor any organisation wholly owned or controlled by any Party or which wholly owns or controls any Party), shall, without the other Party's prior written consent, either directly or indirectly, solicit or entice away (or seek to attempt to solicit or entice away) any employee or consultant of such other Party which was involved in the performance of this Agreement, including in the management and/or supervision hereof.

20. Governing Laws and Dispute Resolution

- 20.1. In the event of any dispute arising out of or in connection with these Terms and Conditions or any Services or Project undertaken in accordance herewith, the parties will attempt in good faith to resolve such dispute through negotiations between senior management executives within thirty (30) days. Where the parties are unable to resolve a dispute by means of negotiation, it is being agreed by both parties that these terms and conditions shall be ultimately governed by, and construed in accordance with, the laws of Malta and subject to the exclusive jurisdiction of the Courts of Malta.

21. Severance

- 21.1. If any of these terms or conditions is declared to be unenforceable, it may be severed from these terms and conditions that shall otherwise remain in full force and effect.

22. Rights Cumulative

- 22.1. All rights granted to either of the parties shall be cumulative and no exercise by either party shall restrict or prejudice the exercise of any other right available to it.

23. Miscellaneous

- 23.1. The expiration or prior termination of this Agreement shall not prevent either party from taking action to enforce a term or condition of this Agreement in respect of any breach occurring prior to such expiration or termination.
- 23.2. For the sake of clarity, the parties acknowledge that in this Agreement words importing the singular include the plural and vice versa; words importing a gender shall include each other gender. A reference to a person shall include a reference to an individual, firm, body corporate, association, government or governmental authority.
- 23.3. It is understood and agreed that the only relationship between the parties shall be that of independent contractors and that no agency, employment, joint venture or partnership is created by the parties under this Agreement nor that the parties endorse the products or services of the other.
- 23.4. No failure to exercise and no delay in exercising any right, power or remedy under this Agreement will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. Any waiver to be effective must be in writing.
- 23.5. Save as otherwise agreed in this Agreement, neither party shall, in any circumstances, be liable to the other (whether in tort, contract or otherwise) for loss of profits, anticipated savings, business, time or goodwill or for any indirect or consequential loss or damages in connection with this Agreement.
- 23.6. BRND WGN acknowledges and declares its acceptance to the fact that Client is appearing hereon in its own name and for and on behalf of any and all of its subsidiary and/or affiliate companies.

24. Sign-Off

I have read, understood and agree to accept the terms and conditions.

Signed:

Position:

Full Name and Surname:

Duly authorised, for and on behalf the Client.

For the love of brands

**BRND
WGN**