

Ownership of Copyright/Copyright Licence

1. The copyright in the Work, including all preparatory designs for the Work which includes but is not limited to sketches, graphic works, project development and production drawings, models, characters, prototypes and other matters ("Artwork"), commissioned by the Commissioner shall be retained by the Illustrator.
2. The Commissioner is deemed to have accepted these terms and conditions if it does not object within one calendar week of receipt.
3. The Commissioner or the Client (where the Commissioner is acting as an intermediary) is granted a licence solely as agreed in correspondence between Folio and the Commissioner and which is set out in the attached Freelance Engagement Agreement (if applicable) and confirmed in Folio's invoice to the Commissioner.
4. For the avoidance of doubt, the Illustrator shall have the right to use the Work and Artwork for the purpose of self-promotion, unless both parties agree otherwise in writing.
5. The licence hereby granted is conditional upon Folio having received payment in full of all monies due and no reproduction or publication rights are granted unless and until all sums due in the licence agreement have been paid.
6. The licence hereby granted is personal to the Commissioner or the Client (where the Commissioner is acting as an intermediary) and the rights may not be assigned or sub-licensed to any third parties without Folio's prior written consent.
7. The Commissioner accepts that the use of the Work and Artwork is restricted as agreed in correspondence between Folio and the Commissioner and which is set out in the attached Freelance Engagement Agreement (if applicable) and confirmed in Folio's invoice to the Commissioner. Further use of the Work or Artwork is subject to an additional licence to be granted by Folio. Both parties shall negotiate the terms of the additional licence in good faith.

Payment

8. Unless agreed otherwise in correspondence between Folio and the Commissioner, the Fee is payable in Pound Sterling, inclusive of all of the Illustrator's expenses and preparation time.
9. All fees due to Folio and the Illustrator shall be exclusive of any applicable Value Added Tax ("VAT") or like tax (which shall be additional).
10. If and to the extent that VAT is payable Folio will render to the Commissioner a VAT invoice.
11. The Commissioner shall pay all invoices within 30 days of the date of the invoice. Folio reserves the right to charge interest at the annual rate of 8% above the Bank of England base rate for the time being, to accrue daily from the due date until payment is received.

Cancellation

12. If a commission is cancelled by the Commissioner, the Commissioner shall pay a cancellation fee as follows:
 - I. 25% of the agreed fee if the commission is cancelled before delivery of roughs;
 - II. 33% of the agreed fee if the commission is cancelled at the rough stage;
 - III. 100% of the agreed fee if the commission is cancelled on the delivery of Artwork;
 - IV. If the commission is cancelled at an intermediate stage, a fair and reasonable pro rata amount on account of the agreed fee commensurate with the schedule performed to date of such cancellation.
13. In the event of cancellation, ownership of all rights licensed or otherwise granted to the Commissioner under the licence shall revert to the Illustrator.

Delivery

14. The Illustrator shall use reasonable endeavours to deliver the relevant Artwork as digital files in accordance with the specifications to the Commissioner by the agreed date and shall notify the Commissioner of any anticipated delay in which case the Commissioner may (unless the delay is the fault of the Commissioner) ask the Illustrator to deliver the relevant Artwork as agreed in the schedule or on a mutually agreed date - whatever is the later date. The Commissioner may cancel the commission without payment in the event of the Illustrator failing to meet the thereby agreed date.
15. FOLIO AND/OR THE ILLUSTRATOR SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL LOSS OR DAMAGES ARISING FROM LATE DELIVERY OF THE DELIVERABLES.
16. The Commissioner shall make an immediate objection upon delivery if the Artwork is not in accordance with the brief. If such objection is not received by Folio within 21 days of delivery of Artwork it shall be conclusively presumed that the Artwork is acceptable.

Approval/Rejection

17. Should the Artwork fail to satisfy the brief, the Commissioner may reject the Artwork on payment of a rejection fee as follows:
 - I. 25% of the agreed fee if the Artwork is rejected at the rough stage;
 - II. 50% of the agreed fee if the Artwork is rejected on delivery.
18. In the event of rejection, ownership of all rights licensed or otherwise granted to the Commissioner under the licence shall revert to the Illustrator.

Changes

19. If the Commissioner changes the brief and requires subsequent changes, additions or variations, the Illustrator may require additional payment. The Illustrator may refuse to carry out changes, additions or variations which substantially change the nature of the commission.

Guarantees

20. Except where Artwork is based on reference material or visuals supplied by the Commissioner or where otherwise agreed, the Illustrator guarantees that the Artwork is original and does not infringe any existing copyright.
21. The Commissioner guarantees that any necessary permissions have been obtained for the use of reference material or visuals supplied by the Commissioner or the Client and undertakes to keep Folio and the Illustrator fully and effectively indemnified against any and all claims and expenses including reasonable legal fees arising from the Illustrator's use of any materials provided by the Commissioner or the Client.

Source Files

22. Deliverables do not include original source files but only files in the format specified in correspondence between Folio and the Commissioner and confirmed in the attached Freelance Engagement Agreement (if applicable). It shall be at the Illustrator's discretion to make original source files available to the Commissioner on request for a mutually agreed fee. Usage of source files shall be governed by the same terms that govern usage of the Work by the Commissioner under this agreement.
23. Where the Artwork is delivered as a layered digital file, the Client shall not without prior written agreement from the Artist via Folio:
 - I. copy individual layers for use in another artwork;
 - II. create animated artworks from the individual layers;
 - III. alter the layers in any way except to allow the Artwork to be placed within the final editorial layout or other agreed graphic design.

Original Artwork

24. The Illustrator shall retain ownership of all original Artwork (including roughs and other materials) delivered to the Client.
25. The Illustrator's original Artwork shall not be intentionally destroyed, damaged, altered, retouched, modified or changed in any way whatsoever without the prior written consent of the Illustrator via Folio.
26. Where hard copy original Artworks are supplied the Commissioner shall return all Artwork to the Illustrator not later than 3 months after delivery in undamaged, unaltered and unretouched condition. The Commissioner may make and retain copies to enable it to exploit the rights granted with the Artwork.
27. If the original Artwork is lost or damaged at any time whilst in the Commissioner's custody the Commissioner shall pay compensation to the Illustrator for the loss/damage of the Artwork at a rate to be agreed in good faith between the parties.

Credits/Moral Rights

28. The Commissioner shall ensure the Illustrator is credited in any editorial use of the Work. Credits for non-editorial use are not required unless specified as part of the licence agreement.

Samples

29. Unless otherwise agreed, the Illustrator shall be entitled to receive not less than four printed copies of the Work if applicable.

Notices

30. All notices shall be sent to Folio and to the Commissioner either at the postal address or email address stated in the licence agreement. Each party shall give written notification of any change of address or email address to the other party prior to the date of such change.

Dispute Resolution

31. In the event of any dispute between the parties, both parties will seek in good faith to resolve the dispute amicably by negotiation.
32. Either party may give the other a written notice that it wishes to refer a dispute to formal mediation ("Mediation Notice"). If within two weeks of service of a Mediation Notice the dispute has not been resolved, the parties shall then try to settle the dispute by mediation in accordance with the Model Mediation Procedure of the Centre for Effective Dispute Resolution. If that fails, or after either party has made all reasonable efforts to follow that procedure, either party may commence proceedings in a court of competent jurisdiction. Either party may at any time seek injunctive relief from a court of competent jurisdiction.

Governing Law

33. These terms and conditions are governed by the law of England and Wales and may not be varied except by agreement in writing. The parties hereto submit to the exclusive jurisdiction of the English Courts.