

TERMS & CONDITIONS OF BUSINESS

Parties

1. **Flat Frog Studio** (Trading as **Flat Frog Films LTD**) is a limited company incorporated in England (Company Number **06696733**) with its registered address at 13 Powerhouse Higham Mead Chesham HP5 2AH (“**Flat Frog Films**” / “**Flat Frog Studio**” / “**Flat Frog**” / “**we**” / “**us**”); and
2. You are the **CLIENT** who has engaged Flat Frog Studio to perform services on behalf of the business you work for (the “**Client**” / “**you**”)

1. Definitions and Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in these Terms & Conditions of Business (“**Agreement**”):

Business Day: a day other than a Saturday, a Sunday or a public holiday in England or Wales;

Client Materials: all materials, products or other works provided by the Client to us to be used in relation to the provision of the Services and creation of the Photographic Works;

Data Protection Laws: means the Data Protection Act 2018 and, where applicable to the United Kingdom, General Data Protection Regulation 2016/679 (GDPR), and to the extent applicable, the data protection or privacy laws of England and any other country;

Fees: : any fees payable by you to us under this Agreement, as set out in the applicable Order;

Final Approval: either: (a) the point of payment of the Fees; or (b) seven days after we send you the Final Photographic Works for approval and we have not received confirmation as to whether the Final Photographic Works are approved, whichever is earlier

Final Photographic Works: : the finalised version of the Photographic Works;

Free Trial: provision of the Services by Flat Frog on a free of charge basis for a prescribed period of time or maximum amount of Photographic Works, as offered by Flat Frog to the Client at our sole discretion;

Intellectual Property Rights: any patents, copyright, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs (whether registered or unregistered) database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights or industrial property rights, in each case whether registered or unregistered and including without limitation 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;

Order: an order placed on www.flatfrogfilms.com detailing the Services and/or Photographic Works to be provided by Flat Frog to you, or as otherwise agreed by the parties in writing;

Personal Data: has the meaning under the applicable Data Protection Laws;

Photographic Works: any images, graphics, computer files or other media or photographic, animated or video content produced by us in accordance with the Specification. The term ‘Photographic Works’ shall also include the ‘Final Photographic Works’;

Services: the services to be provided by Flat Frog to you under this Agreement, as specified in the applicable Order which may include the capture of e-commerce shots, creative shots, pack shots, lifestyle and/or video imagery of the Client’s products or materials, post production services, image clipping services, image re-touching services and video editing services;

Shoot Date: the date agreed upon between the parties on which the Photographic Works will be initially created;

Specification: the number of shots, angles and other details of the Photographic Works to be captured as requested by you in the Order; and

Website: www.flatfrogfilms.com

- 1.2. Clause headings are for references purposes only shall not affect the interpretation of this agreement
- 1.3. A reference to a statute or statutory provision is a reference to it as amended, extended, or re-enacted from time to time
- 1.4. The terms 'including', 'include', 'In particular' or any similar expression shall be constructed as illustrative and shall not limit the sense of the words preceding in those terms.
- 1.5. A reference to 'writing' or 'written' includes email, but not faxes, unless stated otherwise

2. Engagement

- 2.1. Acceptance by you of this agreement shall be made by agreeing to a shoot date in writing or checking the confirmation box on the Shooting Brief & Info PDF.
- 2.2. This agreement shall:
 - 2.2.1. Apply to and be incorporated to any services to be provided by Flat Frog to the Client; and
 - 2.2.2. Prevail over any inconsistent terms or conditions in, or referred to in, the Client's Purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.3. In consideration of payment to Flat Frog of the Fees, the Client engages Flat Frog under this Agreement, and Flat Frog agrees, to provide the Services and produce the Photographic Works in accordance with the applicable Order.
- 2.4. It is the Client's responsibility to ensure that this Agreement is entered into by a person duly authorised by the Client to enter into contracts on their behalf, whether as an employee, director, agent or otherwise and the Client agrees that it enters into and is bound by this Agreement where in all the circumstances it appears to us that acceptance has originated from the Client's business email address

3. Service Process

- 3.1. You may place an Order by contacting us in writing. You will provide a Specification for the Services as part of the Order booking process. Following a request, we will send you an Order acknowledgement email, confirming that we have received your request. Any request for Services by you is an invitation to treat only and shall not be binding until we accept this offer in writing (which will typically be via an Order confirmation email).
- 3.2. We do not guarantee that the pricing stated on the website will be accurate and complete at all times and therefore we reserve the right to adjust the Fees in an Order at any time prior to the commencement of the Services by us
- 3.3. At your own cost, you will deliver to us sufficient Client Materials to be processed through the Services in order to create the Photographic Works. Due to the risk of damage in transit, we recommend that you send us multiple product samples (where applicable). You are solely responsible for delivering the Client Materials in a secure manner. Where you have provided us with written notice in advance, we will return any product samples back to you upon the completion of the Services at your cost.
- 3.4. We will notify you when the Photographic Works are completed and ready for your review. We will give due consideration to comments received from you, and if necessary, we will provide you with up to one set of minor revisions (collectively not to exceed a total of 1 hour of a member of Flat Frog's personnel's time).
- 3.5. If any further amendments or revisions are required thereafter, Flat Frog will provide such additional Services at its then current rates in force from time to time (available on request) in addition to the Fees set out in the Order.
- 3.6. On completion of the Photographic Works you will be responsible for checking and approving the Final Photographic Works before the Services are deemed to be complete. If you do not let us know whether you approve the Final Photographic Works within 7

days of us sending them to you, you will be deemed to have accepted and approved the Final Photographic Works at the end of this 7-day period.

- 3.7. Flat Frog will not be liable for any of the contents of, or errors in, the Final Photographic Works in any medium after the Client has approved them in accordance with clause 3.6 above.
- 3.8. Flat Frog reserves the right to refuse to create, use, publish or broadcast all or any part of the Client Materials or Photographic Works that it considers in its sole discretion is obscene, threatening, menacing, offensive, discriminatory, defamatory, morally unsuitable, in breach of confidence, infringes a third party's Intellectual Property Rights or is otherwise illegal.

4. Free Trial

- 4.1. When agreed with us in writing, you may be eligible to receive a Free Trial of the Services, in which no Fees shall apply (other than postage costs for any product samples).
- 4.2. Upon the completion of a Free Trial, and the placing of a subsequent Order by the Client, the Fees (at the rates stated on the Website or at a rate discussed in writing) shall apply (as updated from time to time).

5. Obligations

- 5.1. We will provide the Services to you using reasonable care and skill and we will use reasonable efforts to deliver the Photographic Works to you in accordance with the applicable Order or Shooting Brief & Info PDF
- 5.2. We will use reasonable efforts to complete the Services within any timeframe agreed with you, but for the avoidance of doubt, time shall not be 'of the essence' for the performance of the Services.
- 5.3. You hereby warrant that you:
 - 5.3.1. will provide us with the relevant Client Materials at least two Business Days prior to the Shoot Date, save where agreed otherwise with us in writing at our sole discretion;
 - 5.3.2. have the appropriate authority to instruct Flat F to create the Photographic Works relating to your Client Materials; and
 - 5.3.3. have the appropriate authority to approve the Photographic Works relating to your Client Materials.
- 5.4. You agree to approve the Photographic Works to ensure that:
 - 5.4.1. they are compliant with all applicable laws (including without limitation, any marketing, labelling and/or food and beverage laws and regulations); and
 - 5.4.2. all Photographic Works relating to product samples are representative of the relevant products.
- 5.5. You hereby warrant that you have obtained all necessary licences, consents and approvals (including from any relevant medical body) required for the marketing of any of your products (where applicable).
- 5.6. You hereby warrant that you have all the necessary rights and ownership in the Client Materials to permit us to use them for the provision of the Services without infringing any third party Intellectual Property Rights.
- 5.7. You hereby acknowledge and agree that our sole responsibility in relation to the contents of the Photographic Works is to obtain your approval of the contents of the Photographic Works.
- 5.8. You agree to provide us with the required Client Materials for the provision of the Services. From time to time we may request that you provide us with additional Client Materials, further information or assistance to enable us to fully perform the Services and you agree that this will promptly be provided to us. You must ensure the accuracy and completeness of all such Client Materials or information provided to us. If we are unable to perform our obligations to you under this Agreement because we have been prevented or delayed by you, such as your failure to do something requested of you, we will not be liable for any delays which may occur in the provision of the Services. If the delay in providing the Services exceeds seven days, you must pay us for any costs or expenses we have incurred as a result of the delay and all work provided by us up to that point in time. In the event that a delay means that you miss the Shoot Date, provided that notice of at least one Business Day prior to the Shoot Date is given, we will use reasonable efforts to provide the Services where there is capacity to do so, but otherwise you will be required to book another Shoot Date (subject to additional fees).

- 5.9. You must check that the terms of each Order and any other information provided to us is correct and accurately reflects your requirements. Any amendments requested by you to the Specification will be at our sole discretion (subject to additional fees).
- 5.10. Where the Services are to be performed by Flat Frog at the Client's premises or any third party location, the Client is responsible for arranging any insurance against any loss or damage that may arise and ensuring that such premises are in a suitable condition for the provision of the Services

6. Storage

- 6.1. All Client Materials and/or Photographic Works which we hold and store for you are kept solely at your risk. You are responsible for insuring any such Client Materials or Photographic Works as you deem to be appropriate.
- 6.2. We will store the electronic files of the Final Photographic Works up until the Services have been completed
- 6.3. We do not provide ongoing storage of the electronic files of the Final Photographic Works.
- 6.4. We shall use reasonable endeavours to assist you (subject to additional fees) with a request for electronic copies of the Final Photographic Works after the Services have been completed but we cannot guarantee that we will still retain such electronic copies

7. Fees and Payment

- 7.1. You must pay the Fees within 30 days of the relevant invoice.
- 7.2. You will not be entitled to set-off, counterclaim, deduct or withhold payment under this Agreement.
- 7.3. If you need us to attend a location outside of our studio, you will be responsible for any fees incurred by us when travelling to and attending such location(s), including travel time at our then current hourly rate. Where possible, we will agree these fees in advance with you in writing.
- 7.4. If any additional expenses are required, we will obtain your written consent before we incur such expenses.
- 7.5. If you do not pay an invoice issued to you by the relevant due date, we reserve the right to take the following actions:
 - 7.5.1. Deleting or disposing of any Photographic Works that we may hold on your behalf. Please note that we will not be responsible for any loss or damage you may suffer as a result of any deletion or disposal; and/or
 - 7.5.2. suspending the Services we provide to you. We will not be liable for any loss of data that may occur in relation to the suspension of the Services.
- 7.6. In the event that require any change or alteration to the Specification ("Change"), the parties shall, prior to such Change being effective or implemented, agree:
 - 7.6.1. the nature of the Change;
 - 7.6.2. the procedures for implementation of such Change; and
 - 7.6.3. the variation to the Fees.
- 7.7. Until any Change is formally agreed in writing between the parties, we will continue to perform and be paid for Services as if the Change had not been proposed, unless otherwise requested by you.
- 7.8. All and any Changes to the Specification must be agreed in writing and accompanied by appropriate amendments to the Fees

8. Intellectual Property Rights

- 8.1. You hereby grant Flat Frog a non-exclusive, perpetual, irrevocable, transferable, royalty-free, worldwide licence to use the Client Materials solely for use in the provision of the Services and the creation and use of the Photographic Works.
- 8.2. We will retain all Intellectual Property Rights and other rights in the Photographic Works. You acknowledge that Flat Frog and its personnel may use any non-confidential details of the Services and the Photographic Works for a number of purposes, including case studies, publications, exhibitions, competitions and other promotional purposes (such as use in print and on our website). You hereby permit Flat Frog and other associated parties to publish the Client's name and standard logo for such purposes
- 8.3. Upon payment of the full Fees, we will grant you a licence for all Intellectual Property Rights in the Final Photographic Works on a non-exclusive, perpetual, irrevocable, non-transferable, royalty-free, worldwide basis to allow you to make reasonable use of the Photographic Works (unless stated otherwise in writing).

- 8.4. The Client acknowledges that the Photographic Works have been created in accordance with the Client's instructions and/or specifications and have been approved by the Client pursuant to clause 3.6. The Client will therefore indemnify and keep Flat Frog and its officers, employees, consultants, agents and sub-contractors indemnified, on demand, against all losses, costs and liabilities and all expenses, including reasonable legal or other professional expenses, suffered or incurred by Flat Frog arising out of or in connection with any claim:
- 8.4.1. in relation to the Client Materials or any Photographic Works infringing a third party's Intellectual Property Rights;
 - 8.4.2. In relation to the Client Materials' or any Photographic Works', accuracy or completeness; and/or
 - 8.4.3. for any defamatory, offensive or illegal content, information or materials provided by you either directly or indirectly to us

9. Confidentiality

- 9.1. A party ("**Receiving Party**") will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed (either orally, in writing or by demonstration) to the Receiving Party by the other party ("**Disclosing Party**") or its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, its products and services which the Receiving Party may obtain ("Confidential Information").
- 9.2. In relation to any Confidential Information received from the Disclosing Party or from a third party on behalf of the Disclosing Party, the Disclosing Party and the Receiving Party agree:
- 9.2.1. to treat the Confidential Information in confidence and to use it only for the purpose of discharging the Receiving Party's obligations under this Agreement;
 - 9.2.2. not to disclose the Confidential Information to any third party without the express written permission of the Disclosing Party (except that the Receiving Party may disclose the Confidential Information to its officers, employees, consultants, agents and sub-contractors who need access to the Confidential Information in connection with discharging the Receiving Party's obligations under this Agreement and provided that such officers, employees, consultants, agents and sub-contractors are made aware of the confidential nature of the Confidential Information and are subject to confidentiality obligations at least as onerous as those set out in this Agreement); and
 - 9.2.3. to treat the Confidential Information with the same degree of care and with sufficient protection from unauthorised disclosure as the Receiving Party uses to maintain its own confidential or proprietary information.
- 9.3. Nothing in this Agreement will prevent the Receiving Party from using or disclosing any Confidential Information which:
- 9.3.1. is in or comes into the public domain in any way without breach of this Agreement by the Receiving Party or any person or entity to whom it makes disclosure;
 - 9.3.2. the Receiving Party can show was: (i) in its possession or known to it by being in its use or being recorded in its files prior to receipt from the Disclosing Party and was not acquired by the Receiving Party from the Disclosing Party under an obligation of confidence; or (ii) to have been independently developed by the Receiving Party without reference to the Confidential Information;
 - 9.3.3. the Receiving Party obtains or has available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use;
 - 9.3.4. is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
 - 9.3.5. is required by law to be released (e.g. by a court order), provided that, when permitted by the applicable law, the Disclosing Party is given as much prior written notice as possible of such request.
- 9.4. This clause 9 shall survive termination of this Agreement, however arising.

10. Data Protection

- 10.1. General Obligations. Each party will ensure that in the performance of its obligations under this Agreement it will at all times comply with all applicable Data Protection Laws and any other applicable privacy laws and regulations.

- 10.2. We acknowledge and agree that we will be the Data Processor under this Agreement and that we shall: (a) keep all Personal Data we receive, store and collect from you strictly confidential (pursuant to clause 9 (Confidentiality)), and not disclose any Personal Data to third parties; (b) not use the Personal Data for any purpose other than to perform our obligations under this Agreement; (c) ensure that all Personal Data we receive, store and collect from you is processed in accordance with this Agreement or as otherwise instructed in writing from time to time by you and we shall not process the Personal Data for any other purpose, unless required by law to which we are subject, in which case we shall to the extent permitted by law inform you of that legal requirement prior to responding to the request; (d) promptly carry out any written request requiring us to amend, transfer or delete the Personal Data or any part of the Personal Data made by you during this Agreement; and (e) notify you without undue delay or in any case within 48 hours upon us or any sub-processor becoming aware of a breach affecting Personal data and at this time providing you with all sufficient information required to meet any obligation to notify the relevant data protection authority or inform affected individuals under applicable Data Protection Laws.
- 10.3. Assistance. We agree to assist you with all subject access requests which may be received from an end-customer in a prompt timeframe (at your cost) and ensure that appropriate technical and organisational measures are in place to enable you to meet your obligations to those requesting access to Personal Data held by us. Upon request, we shall provide you with reasonably requested information within a reasonable timeframe to demonstrate our compliance with this clause 10. We shall assist you in relation to any data impact assessments and/or any prior consultation with the relevant data protection authority, provided that we shall be entitled to charge a reasonable fee for such assistance.
- 10.4. Data Transfers. We agree not to transmit any Personal Data to a country or territory outside the European Economic Area without your prior written consent, provided that such consent is hereby deemed provided where the Personal Data is subject to an adequate level of protection in accordance with Data Protection Laws.

11. Liability

- 11.1. This clause 11 sets out the entire financial liability of each party (including any liability for the acts or omissions of our employees, agents and sub-contractors) to the other party:
- 11.1.1. arising under or in connection with this Agreement;
 - 11.1.2. in respect of any use made by you of the Services and/or the Photographic Works or any part of them; and
 - 11.1.3. in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 11.2. All warranties, conditions and other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 11.3. Nothing in this Agreement limits or excludes the liability of either party: (i) for death or personal injury which results from negligence; (ii) for any damage or liability incurred by a party as a result of fraud or fraudulent misrepresentation by the other party; or (iii) under any indemnities in this Agreement.
- 11.4. Subject to clause 11.3:
- 11.4.1. neither party will be liable for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
 - 11.4.2. each party's total liability to each other party in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising under or in connection with this Agreement will be limited to the Fees paid or payable for the relevant Services provided to you by us giving rise to such liability (or a sum of £1,000 where any liability arises during the Free Trial).
- 11.5. We accept no responsibility for damage to goods in transit and the responsibility of any sample products remains with you (or your carrier service). We recommend that if the samples to be transported are of significant value, insurance should be taken out with the carrier company
- 11.6. Whilst we will use our reasonable endeavours to make sure that any Client Materials you provide to us are not lost or damaged, we will not be responsible or liable for any loss or damage that may occur to them.

12. Termination

- 12.1. After you have completed an Order with Flat Frog, the Services under that Order can only be cancelled with our written consent. If we agree to the cancellation of the Order in writing, you will be responsible for paying for all Services that have been provided up to the date of cancellation on the following terms:
- 12.1.1. where such cancellation is communicated to us more than two clear Business Days in advance of the Shoot Date we shall not be entitled to any proportion of the Fees, but excluding any expenses incurred by us to third parties in preparation for the Shoot Date;
 - 12.1.2. where such cancellation is communicated to us within the period between 1 and 2 clear Business Days in advance of the Shoot Date, we shall, at our discretion, be entitled to recover up to 50% of the Fees, plus any expenses incurred by us to third parties in preparation for the Shoot Date; and
 - 12.1.3. where such cancellation is communicated to us less than 1 clear Business Day before the Shoot Date, or if any such cancellation is not communicated to us at all, we shall be entitled to invoke the full effect of clause 7 above for 100% of the Fees.
- 12.2. Without limiting any other rights or remedies, either party ("Terminating Party") may terminate this Agreement with immediate effect by providing written notice to the other party ("Defaulting Party") on or at any time after the occurrence of any of the events specified below:
- 12.2.1. a breach by the Defaulting Party of its obligations under this Agreement which (if the breach is capable of remedy) the Defaulting Party has failed to remedy within seven days after receipt of notice in writing from the Terminating Party requiring the Defaulting Party to do so; or
 - 12.2.2. an event, including (or similar in nature to) the following:
 - A. the Defaulting Party is unable to pay its debts as they fall due;
 - B. the Defaulting Party goes into liquidation either compulsorily (except for the purpose of reconstruction or amalgamation) or voluntarily;
 - C. a receiver is appointed in respect of the whole or any part of the Defaulting Party;
 - D. a provisional liquidator is appointed to the Defaulting Party or the Defaulting Party enters into a voluntary arrangement or any other composition or compromise with the majority by value of its creditors or has a winding-up order or passes a resolution for the voluntary winding-up or has an administrative receiver appointed or takes steps towards any such event; or
 - E. the Defaulting Party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 12.3. If this Agreement terminates for any reason, notwithstanding any other provision, all charges payable by the Client to Flat Frog under this Agreement will become due and payable immediately in respect of any Services provided up to the effective date of termination and any costs which cannot be reasonably cancelled or recovered. This clause is without prejudice to any right by Flat Frog to claim for interest or any other right under this Agreement. All Fees and any other payments under this Agreement are non-refundable
- 12.4. Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this Agreement shall remain in full force and effect.

13. Force Majeure

- 13.1. Neither party shall be liable for any failure to perform its obligations under this Agreement if such failure results from circumstances which could not reasonably be contemplated at the time of entering into this Agreement and which are beyond the parties' reasonable control (including, without limitation, strikes, lock-outs or other industrial disputes (involving the workforce of Flat Frog), failure of a utility service or transport network, war, riot, civil commotion, terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood, storm or default of suppliers or sub-contractors). If a force majeure event continues for a period of 30 days or more, either party may terminate this Agreement immediately by providing the other party with written notice.

14. Miscellaneous

- 14.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 14.2. It may be necessary for us to update this Agreement and its terms from time to time. If you continue to use the Services after we have informed you of any amendments or additional terms to the Agreement, you will be deemed to have accepted these changes and they will be incorporated into this Agreement.
- 14.3. Subject to clause 14.2, no variation of this Agreement will be effective unless it is in writing and signed by both parties.
- 14.4. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy.
- 14.5. You shall not, without the prior written consent of Flat Frog, assign, transfer, charge, sub-contract or deal in any other manner with all or any of your rights or obligations under this Agreement. Flat Frog may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.6. All notices must be in writing and will be deemed given when mailed by registered or certified mail, return receipt requested, to the other party's main business address. Serving notice by email or fax will not be accepted as an effective method of providing notice of a claim under this Agreement.
- 14.7. No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 14.8. Nothing in this Agreement is intended to, or will be deemed to establish any partnership or joint venture between the parties, make a party the agent of the other party or authorise a party to make or enter into any commitments for or on behalf of the other party.
- 14.9. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 14.10. 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) is governed by English law and the parties agree to irrevocably submit to the exclusive jurisdiction of the English courts.