

GADD

Marketing

"Be Proud Of Your Purpose"

TERMS & CONDITIONS

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ABOUT US

BE PROUD OF YOUR PURPOSE

GADD Marketing was Founded by Mieke Gadd in September 2020

We are a Marketing Agency with a difference! We believe if a brand has a clear, aligned and targeted vision, then it can achieve greatness. Quality comes from the correct image. It is about the consumer wanting to invest in a lifestyle and culture, not just a product or service.

Specialists in aiding SMEs and independents with:

Marketing Support
Brand Development
Social Media Management
Paid Advertising
Web Design
SEO
Content Creation
LinkedIn Lead Generation
Developing Corporate Relations
Event management

We believe if a brand has a clear, aligned and targeted vision, then it can achieve greatness.

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1 Introduction

The following terms and conditions apply to the Contract (see definition below) and each future request for the supply of services and/or materials received by Gadd Marketing Limited from the Client (see definition below) from time to time unless otherwise agreed in writing.

The communication of a request by the Client to Gadd Marketing Limited for the supply of services and/or materials shall amount to the Client's acceptance of these terms. These terms shall take precedence over any terms and conditions of the Client, whether attached to, enclosed with or referred to in any purchase order of the Client or elsewhere. They may not be varied except by written agreement between Gadd Marketing Limited and the Client.

2 Definitions

In these terms and conditions the following words shall have the meanings given in this clause:

- 2.1 'Gadd' means Gadd Marketing Limited of Saddlestone Cottage, 2 Hackwell Bank, Napton on the Hill, Southam, CV47 8FH
- 2.2 'Brief' means either (a) the written brief describing the Deliverables, their intended use and any pre-set timings for supply, signed by the Client and supplied in advance of conclusion of the Contract or (b) where no such written brief exists the instructions provided by the Client to Gadd and Gadd's written confirmation to the Client of such instructions shall be regarded as conclusive proof thereof.
- 2.3 'Client' means the person, firm or company described as such overleaf;
- 2.4 'Contract' means the agreement whereby Gadd carry out any services instructed by the Client.
- 2.5 'Deliverables' means the services and/or materials to be supplied by Gadd under this contract described in more detail in the Brief
- 2.6 'Job Cost' means the fee to be charged by Gadd for the Deliverables;
- 2.7 'Project' means any project for the provision of services (other than under the terms of Retainer) and which is described in a Proposal;
- 2.8 'Proposal' means any proposal or quotation provided by Gadd to the Client and which is agreed between the parties
- 2.9 'Retainer' a contract under which Gadd agrees to provide ongoing services for a fixed number of days/hours per month, or a fixed service every month (or at such other intervals as shall be agreed).
- 2.10 'Rights' means all copyright and related rights, design rights (whether registered or unregistered), patents, rights in trade marks (whether registered or unregistered), database rights and any other intellectual property rights (including all similar or equivalent rights or forms of protection in any part of the world) in or relating to the Deliverables, Project or Retainer.
- 2.11 'Services' such marketing and/or PR services or any other services which the parties agree that Gadd shall provide the Client

3 Gadd's obligations

Gadd will use its reasonable care and skill in the production and supply to the Client of the Deliverables as per the Brief and any other requirements identified overleaf.

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4 Charges and Payment

4.1 Where the Services are provided on the basis of a Retainer:

(a) the charges payable shall be calculated in accordance with Gadd's standard daily/hourly fee rates, as amended from time to time by Gadd

4.2 Where the Services are provided as a Project, the total price for the Services shall be the amount set out in the Proposal.

4.3 In either case the charges exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom Gadd engages in connection with the Services, and VAT, which Gadd shall add to its invoices at the appropriate rate.

4.4 Gadd will charge the Client for all third party costs stated in any Proposal or as otherwise agreed with the Client. Gadd shall be entitled to retain any rebate or discount offered by the relevant third party without passing this on to the Client, or otherwise reserves the right to charge the Client (at its absolute discretion) an uplift on the amount charged by such third party;

4.5 Charges for Services provided on the basis of a Retainer will be payable monthly in advance, or as otherwise stated in the Proposal. In the case of Services provided as a Project, Gadd shall, unless otherwise stated in a Proposal, invoice the Client on a monthly basis and such invoice is payable in cleared funds within 7 days of receipt. In either case Gadd reserve the right to require payment in advance of any Expenses or Third Party Costs, failing which payment for such Expenses and/or Third Party Costs shall be payable in cleared funds within 7 days of receipt of invoice.

4.6 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Gadd on the due date, Gadd may:

(a) charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Lloyds Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and Gadd may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and

(b) suspend all Services until payment has been made in full.

4.7 Time for payment shall be of the essence of the Contract.

4.8 All sums payable to Gadd under the Contract shall become due immediately on its termination, despite any other provision. All contracts are subject to a minimum of a 60 day notice period if any cancellation takes place. At the point of cancellation a summary of the remaining invoices to be raised will be advised by our Finance Department including any part payments due at the end of the notice period. All services will be deemed complete at the end of this notice period. This clause 8.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

4.9 Gadd may, without prejudice to any other rights it may have, set off any liability of the Client to Gadd against any liability of Gadd to the Client.

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5 Brief, Deliverables and changes

The Client warrants that the Brief is accurate in all respects. As the Job Cost and any pre-set dates for supply of the Deliverables will be agreed on the basis of the Brief, any changes to it after the conclusion of the Contract, whether resulting from alterations by the Client, delay in providing Gadd with materials, information, instructions or authorisations, supply of faulty materials to Gadd by the Client, or any other circumstances beyond Gadd's control, will be subject to extra charges for Gadd's time and work and may involve delays in supply. The Client will pay these extra charges and reimburse Gadd for any third party charges or expenses incurred by Gadd on the basis of the original Brief.

6 Production

Unless otherwise agreed in writing Gadd will arrange and oversee all production and post-production related to the Project. Should it be agreed that the Client arranges any production work itself, then in that regard Gadd shall not be responsible for the booking, supervision or quality control of any relevant facilities, nor will it be responsible for payment of any related charges.

7 Approvals

7.1 Written approval by the Client of final copy, layouts, scripts, storyboards, designs and the like will be Gadd's authority to proceed with production or publication as appropriate.

7.2 Where artwork or other material is sent to the Client for final approval, the Client shall check it carefully and notify Gadd by email of any errors or alterations. Gadd will use its reasonable endeavours to effect any changes so notified but Gadd reserves the right to charge extra if any of these alterations either go beyond the original Brief or are notified to Gadd more than 3 working days after their supply to the Client. Where notification of errors is either delayed in this way or does not occur at all before publication, Gadd will not be liable in respect of any such errors. Gadd will also not be liable in respect of errors occurring where the Client either does not pay for proofs or mock-ups or oversees the print and production process or does not allow enough time in the production schedule to check layouts, copy, pagination or other content aspects. Gadd cannot guarantee that any or all colours will be exactly replicated in the final version as published.

8 Rights – Standard Licence

8.1 All intellectual property rights in the Deliverables (excluding client materials) arising in connection with the Contract shall be the property of Gadd and Gadd shall grant The Client a royalty free standard licence of such intellectual property rights, coming into effect on payment of the relevant invoice, to use the Deliverables for the purposes, in the territories and in respect of the products or services defined in the Brief (but only for such use anticipated by the Brief).

8.2 Such licence shall be automatically terminated if the Client either:

- a. does not pay the Job Cost in full by the due date; or
 - b. (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or
 - c. (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or
- 8.4 becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- 8.5 has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or
- 8.6 ceases, or threatens to cease, to carry on its business.

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9. Standard Licence Terms

9.1 If the Client wishes to use the Deliverables in ways going beyond the parameters in the Brief and/or overleaf, it must approach Gadd for prior written consent.

9.2 In so far as use of the Deliverables as per the Contract involves use of third party material, Gadd will use every endeavour to secure such licence as is necessary to allow the required use of the same but only the extent required by the Brief and any use thereof outwith the Brief shall be at the Client's wish and the Client shall indemnify Gadd in respect of any claim arising out of such use.

9.3 Subject to the above and to the rights of any third party, ownership of the Rights shall remain vested in Gadd unless and until any assignment or other disposition of the Rights is agreed between the parties in writing.

9.4 For the avoidance of doubt, where Gadd makes any presentation to the Client going beyond the Brief, the Client shall have no right to make use of any material contained in such presentation unless and until a separate contract is concluded between the parties.

9.5 Use of the Deliverables as per the Brief may involve the Client in continuing liability to third parties, for example for royalties, licence fees and performance fees. Gadd will endeavour to notify the Client of these as soon as practicable during the production process.

9.6 If, during or after the period of use of the Deliverables envisaged in this Contract, the Client wishes to use or authorise another to use any cartoon figure, distinctive device or other part of the Deliverables in ways outside those contemplated in this Contract, Gadd will not unreasonably withhold its consent for such use but may make such consent conditional on prior agreement between the parties as to reasonable fees and/or royalties.

9.7 The Client may only use the Deliverables for those advertising, promotional and other specified purposes which are Permitted Uses (as defined below). For clarity, the Client may not use the Deliverables in products for resale, licence or other distribution, unless (i) the proposed use is allowable under an Extended License which is available for the Deliverables; or (ii) if the original Deliverables have been fundamentally modified or transformed sufficiently that it constitutes an original work entitling the author or artist to copyright protection under applicable law, and where the primary value of such transformed or derivative work is not recognisable as the Deliverables nor are the Deliverables capable of being downloaded, extracted or accessed by a third party as a stand-alone file (satisfaction of these conditions will constitute the work as a "Permitted Derivative Work" for the purposes of this Agreement). For example, the Client cannot superficially modify the Deliverables, print it on a t-shirt, mug, poster, template or other item, and sell it to others for consumption, reproduction or resale. These uses will not be permitted as or constitute Permitted Derivative Works. If there is any doubt that a work is a Permitted Derivative Work, the Client should either obtain an Extended License or contact Gadd for guidance. Any use of the Deliverables that is not a Permitted Use shall constitute infringement of copyright.

(a) Permitted Uses. Subject to the restrictions described under Prohibited Uses below, the following are "Permitted Uses" of Deliverables:

advertising and promotional projects, including printed materials, product packaging, presentations, film and video presentations, commercials, catalogues, brochures, promotional greeting cards and promotional postcards (i.e. not for resale or license);

entertainment applications, such as books and book covers, magazines, newspapers, editorials, newsletters, and video, broadcast and theatrical presentations;

on-line or electronic publications, including web pages to a maximum of 800 x 600 pixels;

prints, posters (i.e. a hardcopy) and other reproductions for personal use or promotional purposes specified in (1) above, but not for resale, license or other distribution; and

any other uses approved in writing by Gadd.

If there is any doubt that a proposed use is a Permitted Use, the client must contact Gadd for guidance and prior written consent

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10. Standard Licence Prohibitions

(a) Prohibited Uses. The Client may not do anything with the Deliverables that is not expressly permitted in the preceding section or permitted by written agreement of Gadd. For greater certainty, the following are "Prohibited Uses" and the Client may not:

use the Deliverables in design template applications intended for resale, whether on-line or not, including, without limitation, website templates, Flash templates, business card templates, electronic greeting card templates, and brochure design templates;

use or display the Deliverables on websites or other venues designed to induce or involving the sale, licence or other distribution of "on demand" products, including postcards, mugs, t-shirts, posters and other items (this includes custom designed websites, as well as sites such as www.cafepress.com);

incorporate the Deliverables in any product that results in a re-distribution or re-use of the Deliverables (such as electronic greeting card web sites, web templates and the like) or is otherwise made available in a manner such that a person can extract or access or reproduce the Content as an electronic file;

use the Deliverables in a fashion that is considered by Gadd as considered pornographic, obscene, immoral, infringing, defamatory or libellous in nature, or that would be reasonably likely to bring any person or property reflected in the Deliverables into disrepute;

use or display any Deliverables that feature a model or person in a manner that (i) would lead a reasonable person to think that such person uses or personally endorses any business, product, service, cause, association or other endeavour; or (ii) that depicts such person in a potentially sensitive subject matter, including, but not limited to mental and physical health issues, social issues, sexual or implied sexual activity or preferences, substance abuse, crime, physical or mental abuse or ailments, or any other subject matter that would be reasonably likely to be offensive or unflattering to any person reflected in the Deliverables;

remove any notice of copyright, trade-mark or other proprietary right from any place where it is on or embedded in the Deliverables;

sub-licence, re-sell, rent, lend, assign, gift or otherwise transfer or distribute the Deliverables or the rights granted under this Agreement;

post a copy of the Deliverables on a network server or web server for use by other users;

use or display the in an electronic format that enables it to be downloaded or distributed via mobile devices or shared in any peer-to-peer or similar file sharing arrangement;

11. Compliance

It shall be the sole responsibility of the Client to ensure that the Deliverables comply with all local laws (whether consumer, public or civil), regulations and codes in all countries in which use is intended as stated in the Contract. It shall also be the Client's responsibility to ensure that the Deliverables carry all disclaimers, warnings and public information which any competent lawyer of the Client in any of the relevant jurisdictions would advise.

Accordingly the Client agrees to indemnify Gadd or its agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) arising from any claim, demand or action alleging that the Deliverables or use of them are contrary to any law, code or regulation in any country.

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12. Publicity and examples

Notwithstanding the licence described in clause 8,9 and 10 above or any other disposition of the Rights agreed between the parties, Gadd shall have a continuing right to use the Deliverables for the purposes of advertising or otherwise promoting the Gadd's work.

The Client shall unless otherwise agreed mark all design work supplied as part of the Deliverables with the phrase 'Design by Gadd Creative Marketing Limited appropriate variants as agreed) in a suitable place. Gadd reserves the right to request the non-appearance or removal of this credit in any particular case. The Client shall comply with any such request within 30 days, but shall not thereby be obliged to make changes to material already produced or published.

The Client shall, within 28 days after production or publication commences (as appropriate), provide Gadd with 10 finished printed copies of any production run or other published material derived from the Deliverables.

13 Expenses

Gadd will, where practicable, endeavour to estimate studio costs and extras such as couriers and other external services to be used in relation to the Deliverables, but this will not always be possible. All expenses related to a production, for example couriers, dubs, stock, print-outs, scans and overtime, will be invoiced by Gadd at cost and the Client shall pay such invoices within 7 days of the date of the invoice.

Where expenses are likely to be significant, Gadd reserves the right to require the Client to pay the full amount of the expected expense in advance.

General out-of-pocket expenses incurred in supplying the Deliverables, such as courier charges, travelling and hotel expenses, will be charged by Gadd at cost and the Client shall pay the relevant invoices within 7 days of the date of the invoice.

Where extra expenses are incurred, either as a result of alterations to the original Brief or otherwise at the Client's request, the Client shall pay such expenses by way of settlement of the relevant invoices within 7 days of the date of the relevant invoice.

14. Delivery

If the Deliverables include any goods, then delivery of such goods shall be regarded as occurring when either two business days have elapsed following the day the Client has been informed that the goods are awaiting collection or, in cases where the Deliverables include delivery of the goods to the Client, on the day of delivery to the Client. If the Client is unable to collect the goods as provided for above, then Gadd shall be entitled to arrange storage and/or transportation for the goods on the Client's behalf at the Client's expense. All charges for such storage, transport and any insurance shall be payable by the Client forthwith on request.

The Client shall inspect and check the goods immediately on delivery and shall give Gadd notice in writing by fax or post within 3 working days after the day of delivery as to any alleged defect together with details of the alleged defect. The Client will permit Gadd to inspect any allegedly defective goods. Failing such notice, the goods shall be deemed to be in accordance with the Contract and the Client shall be deemed to have accepted the goods and to be liable to pay for the goods.

The risk in Deliverables shall pass to the Client upon the commencement of supply or transportation to the Client or, where the Client will not accept supply on the date required by Gadd, to temporary storage arranged by Gadd

Where either delivery difficulties or other circumstances necessitate Gadd electronically storing any part of the Deliverables for the Client's future use, Gadd reserves the right to levy storage charges and charges for retrieval from storage, which the Client shall pay within 7 days of the date of the relevant invoice.

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15. Trade marks and domain names

If any Deliverables use any trade marks, trading styles or trade names ('Marks') owned by the Client or under its control, it is agreed that Gadd shall have the right to use or allow use of any such Marks for the purpose of fulfilling Gadd's obligations under the Contract. Gadd shall not gain any rights over such Marks by virtue of such use, but Pure shall be entitled to use the Marks both during and after the production and supply of the Deliverables to promote and advertise its own work.

It shall be the Client's responsibility to ensure that all domain names used in connection with the Deliverables are wherever practicable properly registered and do not infringe any third party rights and that any Marks of the Client or any third party used in the Deliverables, including such Marks as are supplied by Gadd as part of the Brief, are used in a manner which neither undermines the Client's rights in its Marks nor infringes any third party rights.

16 Rejection or cancellation

Unless a rejection fee has been agreed in advance, the Client shall have no right to terminate the Contract, nor allege breach of Contract, nor seek any cancellation, reduction or repayment of the Job Cost on the basis of style or composition.

All contracts are subject to a minimum of a 60 day notice period if any cancellation takes place. At the point of cancellation a summary of the remaining invoices to be raised will be advised by our Finance Department including any part payments due at the end of the notice period. All services will be deemed complete at the end of this notice period. This clause 8.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

Once the Contract is concluded as provided on these terms and conditions, any subsequent cancellation by the Client will result in the Client being liable for the full Job Cost as if the cancellation had not taken place, excluding such committed third party expenses as Pure is able to avoid liability for within its existing contractual commitments to suppliers.

17 Property

Where Deliverables are supplied to the Client on computer disks or other electronic storage method, then Gadd remains the owner of these storage media and reserves the right to require immediate return of them. Should any artwork be supplied to the Client in digital form, the Client may not amend it or otherwise use it for purposes outside those contemplated by this Contract without Gadd's express prior written permission.

18 Client's Own Media, Personnel and Equipment

The Client shall be responsible for:

the actions of the Client's Personnel on the Premises;

any and all injury, loss or damage to any person's equipment or premises caused by any act or omission of the Client's Personnel, or as a result of any defect in or inappropriate specification of the Client's Equipment or the Client's own media;

the cost of the hire of any Client's Equipment;

any costs and expenses incurred by Pure on behalf of the Client at the Client's request; and

any and all loss or damage to the Client's Equipment (which shall be at the sole risk of the Client).

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19 Retention of Title

19.1 Gadd retains ownership in the Deliverables delivered as against the Client or any subsequent purchaser thereof until the full Job Cost has been paid.

19.2 If any of the Deliverables is incorporated in or used as material for other goods before payment to Gadd, the property in the whole of those other goods shall be and remain with Gadd until payment shall have been received or the other goods have been sold and all of Gadd's rights under this agreement in the Deliverables shall extend to those other goods. Gadd's right to the Deliverables and/or the other goods is recognised in this agreement and it is the intention of both parties that ownership of the Deliverables and/or the other goods shall vest in Gadd.

20 Liability

Nothing in these terms and conditions shall exclude or restrict Gadd's liability for death or personal injury resulting from its negligence, liability for fraudulent misrepresentation or any other liability which cannot be excluded or limited under applicable law. Subject to this:

20.1 Save to the extent that such liability arises from Gadd's negligence resulting in death or personal injury Gadd's total liability to the Client in contract law or in tort or otherwise howsoever arising in relation to this Contract is limited to Gadd's charges for the Deliverables;

20.2 Gadd shall not be liable in any way in respect of any failure, delay or defect in the supply or use of the Deliverables caused by the supply or specification by the Client of unsuitable material or content or by the reproduction of the Deliverables by a third party; and

20.3 Gadd will not be liable to the Client for economic loss including loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of any description howsoever caused and even if foreseeable by Gadd

20.4 All warranties, conditions and other terms implied by statute, common law or otherwise are hereby excluded from the Contract to the fullest extent permitted by law.

21 Gadd's status

Gadd acts in this Contract as a principal and not as agent for the Client and will enter into all related contracts as principal.

22 Sub-contracting and assignment

Gadd may sub-contract any or all of its rights or obligations under this Contract and may with the Client's consent, such consent not to be unreasonably withheld or delayed, assign the benefit and burden of its rights and obligations under this Contract to any other entity.

23 Confidential information

Neither party shall divulge any confidential information which is supplied to it about the other party in the course of this Contract or any pre-Contract discussions, other than information forming part of the public domain otherwise than through a breach of this clause or any other obligation of confidence.

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24 Termination

Either party may by 60 day notice in writing to the other terminate this Contract forthwith upon the happening of one or more of the following events:

24.1 if the other shall fail to make any payment due under this Contract within 7 days after the due date, or to remedy any other breach within 30 days after being required to do so in writing; or

24.2 if the other shall be involved in any of the situations described at clauses 8.2-8.6 above.

24.3 Such termination shall be without prejudice to the parties' accrued rights and liabilities, for example, Gadd's entitlement to payment for work done.

25 Matters beyond Gadd's reasonable control / Force Majeure

Gadd is not liable for any breach of this Contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving Gadd's employees), weather of exceptional severity, unavoidable hardware or software failures, or acts of local or central government or other authorities.

26 Entire agreement

This Contract is the entire agreement between the parties on the subject matter contained herein and supersedes all representations, communications and prior agreements between the parties in that regard. Each party acknowledges that it has entered into this Contract in reliance only on the representations, warranties, promises and terms contained or expressly referred to in this Contract and, save as expressly set out in these terms and conditions, neither party shall have any liability in respect of any other representation, warranty or promise unless it was made fraudulently.

27 Third party rights

Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

28 Service of notices

Notice given under the Contract shall be in writing and can be sent by email, hand, by post or by fax.

29 SEVERANCE

29.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

29.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

29.3 The parties agree, in the circumstances referred to in clause 24.1, and if clause 24.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

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30 Governing law and jurisdiction

This Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law and each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of England and Wales.