

## Design supplementary terms

### 1. Interpretation

1.1. The following definitions and rules of interpretation apply in these supplementary terms.

**Approve, Approved or Approval** means the approval or deemed approval of the Deliverables by the Customer pursuant to paragraph 4.

**Customer Content** means the content provided to the Company by the Customer from time to time.

**Design Fees** means the fees detailed in the Quotation or in the absence of such, the Company's standard daily fee rate.

**Design Services** means the design services including any Deliverables to be provided pursuant to these Supplementary Terms as set out in the Quotation.

**Final Art** means all creative content developed or created by the Company or commissioned by the Company for the Customer and incorporated into and delivered as part of the Deliverables including but not limited to any visual designs, visual elements, graphic design, illustrations, photography, animation, sounds, typographic treatment and text, modifications to Customer Content together with the Customer Content and/or Third Party Materials.

**General Conditions** means the Company's general terms and conditions for the supply of services which shall be read in conjunction with these Supplementary Terms.

**Preliminary Works** means all artwork including but not limited to, concepts, sketches, visual presentations or other alternative or preliminary designs, documents or materials developed by the Customer in the provision of the Design Services and which may or may not be submitted to the Customer for consideration.

**Supplementary Terms** means these supplementary terms and conditions relating to the provision of Design Services as amended from time to time.

**Third Party Materials** means any third party materials or content incorporated into the Deliverables.

1.2. All initial capitalised terms not defined in paragraph 1 above shall have the meaning given to them in the General Conditions

1.3. In the event of any inconsistency between the provisions of these Supplementary Terms and the General Conditions, the terms of these Supplementary Terms shall prevail.

### 2. Design Services

2.1. The Company shall provide the Design Services in accordance with the Quotation and these Supplementary Terms.

2.2. The Company agrees to use its reasonable endeavours to provide the Design Services and complete any Deliverables by the date specified in the Quotation but it cannot and does not guarantee that the Design Services and any Deliverables can be completed within any timetable detailed in the Quotation.

2.3. The Company shall not in any circumstances be liable to the Customer:

2.3.1. for failure to provide the Design Services and/or Deliverables in accordance with any timetable detailed in the Quotation;

2.3.2. for a failure or delay in providing the Design Services and/or Deliverables caused by any act or omission of the Customer or the Customer's agents, sub-contractors or employees as referred to clause 4.2 of the General Conditions; or

2.3.3. for a failure or delay in providing the Design Services and/or Deliverables caused by any act or omission of a third party.

### 3. Customer responsibilities

3.1. The Customer acknowledges that:

- 3.1.1. it is the Customer's responsibility to carry out applicable full availability and infringement searches on any logo proposed by the Company;
- 3.1.2. it is the Customer's responsibility to obtain legal and professional advice concerning the registrability of any proposed logo and its potential to infringe third party Intellectual Property Rights;
- 3.1.3. the Company reserves the right to refuse to carry out or continue with any Design Services which it in its absolute discretion considers to be illegal, immoral, seditious, blasphemous, obscene, indecent, pornographic, infringing third party rights or otherwise inappropriate for it to carry out or continue with;
- 3.1.4. it is the Customer's responsibility to ensure clearance of any Third Party Materials which may be sourced for the Customer or otherwise used in the provision of the Design Services and/or Deliverables; and
- 3.1.5. it is the Customer's responsibility to carry out a final proof read of any Deliverable and in the event that the Customer has Approved the Deliverables but errors are subsequently identified, the Customer shall be responsible for any additional fees incurred by the Company in correcting such errors.

3.2. The Customer shall be responsible for the accuracy and completeness of the Customer's Content in accordance with paragraph 7 and to provide it in a form suitable for reproduction or incorporation into the Deliverables in accordance with the Company's instructions.

3.3. All Deliverables shall bear the appropriate accreditation or copyright notice in the Company's name in the form, size and location incorporated by the Company or as otherwise directed by the Company. The Customer also agrees that the provision of Design Services and/or Deliverables may be included in the Company's portfolio of completed system projects and that the Company retains the right to reproduce, publish and display the Deliverables in its portfolio, website and any other media or exhibits for such purpose.

3.4. All Deliverables shall bear the appropriate accreditation or copyright notice in the Customers name in the form, size and location incorporated by the Customer or as otherwise directed by the Customer. The Customer also agrees that the provision of Design Services and/or Deliverables may be included in the Company's portfolio of completed system projects and that the Company retains the right to reproduce, publish and display the Deliverables in its portfolio, website and any other media or exhibits for such purpose.

#### **4. Approval**

4.1. Once the Company has completed the Preliminary Works and/or the Deliverables in accordance with the Quotation, the Company shall submit them to the Customer for Approval.

4.2. The Customer shall:

4.2.1. review the Preliminary Works and/ or the Deliverables within the time frame specified by the Company but in the absence of such, within 5 Business Days of the Company submitting the Preliminary Works and/or the Deliverables; and

4.2.2. to promptly either Approve the Preliminary Works and/or the Deliverables in writing or to provide written comments and/or corrections to the Company. Such comments and/or corrections shall be contained in one document and shall be in sufficient detail to enable the Company to identify the Customer's concerns, objections or corrections relating to the Preliminary Works and/ or the Deliverables.

4.3. The Customer shall at all times remain responsible for reviewing the accuracy and completeness of the Preliminary Works and/ or the Deliverables on submission by the Company. The Company accepts no liability whatsoever for any inaccuracies or errors in the Preliminary Works and/or the Deliverables once they have been Approved.

4.4. The Design Fees encompass one iteration of the Preliminary Works and/or the Deliverables unless otherwise agreed by the Company in writing. Any further amendments or iterations shall be

charged for at the rate set out in the Quotation or in the absence of such, at the Company's standard fee rate.

4.5. Approval of the Preliminary Works and/or the Deliverables shall be deemed to have taken place upon the occurrence of any of the following events:

- 4.5.1. the Customer confirming its Approval in accordance with paragraph 4.2.2;
- 4.5.2. the Customer failing to confirm its Approval or provide its written comments in accordance within the time frame referred to in paragraph 4.2.2;
- 4.5.3. the use of the Preliminary Works and/ or the Deliverables by the Customer in the normal course of the business; or
- 4.5.4. the Customer uses any part of the Preliminary Works and/or the Deliverables or any revenue-earning purposes or to provide any services to third parties

4.6. In the event that the Customer fails to Approve the Preliminary Works and/or the Deliverables or to provide its comments in accordance with paragraph 4.2.2, the Company, notwithstanding paragraph 4.5.2, reserves the right to suspend the provision of any further Design Services until such Approval and/or comments are received by the Company and to invoice the Customer for all Design Services provided up to that date.

## **5. Design Fees**

5.1. The Design Fees and additional expenses will be payable in accordance with the Quotation.

5.2. The provision of any Design Services which fall outside of the scope detailed in the Quotation including (but not limited to) any further amendments or iterations to the Deliverables which are outside the scope of the Quotation or a change to the scope of the Design Services or Deliverables detailed in the Quotation, shall be charged for at the applicable time and materials rate set out in the Quotation or in the absence of such, at the Company's standard daily fee rate.

## **6. Third parties**

6.1. Where any third party services and/or products are to be supplied as part of the Design Services, such third party services and/ or products will be supplied in accordance with the relevant third party's standard terms. Any additional fees for such third party services and/or products will be detailed in the Quotation or otherwise agreed between the parties in writing.

## **7. Customer Content**

7.1. The Customer shall ensure that the Customer Content does not infringe any applicable laws, regulations or third party rights (such as material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).

7.2. The Company reserves the right to refuse to accept any Customer Content or to remove it from any Deliverables where it reasonably suspects such content is Inappropriate Content. The Company shall notify the Customer if it becomes aware of any allegation that Customer Content may be Inappropriate Content.

7.3. The Customer shall indemnify the Company against all damages, losses and expenses arising as a result of any action or claim that the Customer Content or any other material constitutes Inappropriate Content.

## **8. Warranties**

8.1. The Company warrants that upon Approval, the Deliverables will comply substantially with the specification detailed in the Quotation or otherwise agreed in writing with the Company. If the Deliverables do not so comply, the Company shall, for no additional charge, carry out any Design Services necessary in order to ensure that the Deliverables substantially complies with the specification detailed in the Quotation or as otherwise agreed.

8.2. The warranty set out in paragraph 8.1 shall not apply to the extent that any failure of the Deliverables to comply substantially with the specification detailed in the Quotation or as otherwise agreed, is caused by a force majeure event which has the meaning given in clause 11 of the General Conditions, is caused by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, is caused by the Customer Content or is caused by a third party.

## **9. Intellectual Property Rights**

9.1. Except as expressly provided in these Supplementary Terms or otherwise in writing by the Company, pursuant to clause 7.1 of the General Conditions, all Intellectual Property Rights in any Preliminary Works and the Deliverables but excluding the Customer Content, arising in connection with the Contract shall be the property of the Company, and the Company hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of utilising such Deliverables.

9.2. The Customer Content shall remain the sole property of the Customer. The Customer hereby grants to the Company a licence of the Customer Content to enable the Company to provide the Design Services in accordance with these Supplementary Terms.

9.3. The Customer shall indemnify the Company against all damages, losses and expenses arising as a result of any action or claim that the Customer Content infringes the Intellectual Property Rights of a third party.

9.4. Any Third Party Materials are the exclusive property of their respective owners. The Company will advise the Customer of all Third Party Material that may be required in the provision of the Design Services and the need to obtain a licence for the use of such Third Party Materials.

9.5. On completion of the Design Services and full payment of the Design Fees and any other fees or expenses which are payable by the Customer under the Contract, the Company hereby assigns to the Customer:

9.5.1. all its rights, title and interest in and to any artworks or designs comprising the works created by the Company for use by the Customer as a trade mark; and

9.5.2. except as expressly specified by the Company in writing, all its rights, title and interest in and to the Final Art.

9.6. The Customer shall indemnify the Company against all damages, losses and expenses arising as a result of any action or claim arising from the Customer's use and/or failure to obtain rights to use such trade mark referred to in paragraph 9.5.1.

## **10. Term and termination**

10.1. The provision of Design Services shall commence on the date set out in the Quotation and shall, subject to earlier termination pursuant to the General Conditions, continue until the Approval of the Deliverables and/or completion of the Design Services and payment of all outstanding sums.

10.2. On termination of these Supplementary Terms for any reason, each party shall as soon as reasonably practicable return, destroy or permanently erase (as directed in writing by the other party) any materials, documents, designs, illustrations, photographs or other information or data provided to it by the other party, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this paragraph 10.2, that the Customer has (if appropriate) paid the Company in full for such materials, documents, designs, illustrations, photographs or other information or data. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe-keeping.

