



web development & graphic design

Terms and Conditions

1. TERMS OF THE CONTRACT:

- 1.1 This Contract is between Colin Miller Limited (hereafter known as the Designer) and (hereafter known as the Client).
- 1.2 The client will provide a brief to the Designer who will produce a quote detailing the design work to be carried out. This quotation will be based on the current cost of resources to be used for the project. The Designer will honour the quotation for a period of 30 days wherever possible but reserves the right to amend the quotation at any time to meet a rise or fall in the cost of resources. The Client must provide written confirmation that the quote is acceptable.
- 1.3 The Client and Designer will agree the brief prior to commencement of the design project and this will form the Design Agreement.
- 1.4 The Contract between the Client and the Designer shall consist of these Terms and Conditions and the Design Agreement, which together shall form the Entire Agreement between the parties. The Terms and Conditions and Design Agreement may not be modified in any respect except in writing and signed by both parties. No course of trade or custom shall change the terms of these Terms and Conditions and the Design Agreement.

2. THE SERVICE:

- 2.1 The Client contracts the Designer to provide the services as detailed in the Design Agreement.
- 2.2 The Client is solely responsible for supplying all relevant materials and information to the Designer e.g., content, images etc.; The Client is required to provide such information and materials in accordance with the timescales stated in the Design Agreement. Failure to do so may incur cancellation in which case all monies paid will not be refunded.
- 2.3 For website projects the site will be installed on the Client's web space on a web hosting service's computer. The Client hereby authorizes the Designer to access this account, and authorizes the web hosting service to provide the Designer with "write permission" for the Client's web page directory, cgi-bin directory, and any other directories or programs which need to be accessed for this project.
- 2.4 The Designer agrees to complete this project within the agreed cost for the work required, unless the Client requires additional work or services not agreed upon in the Design Agreement, or if the Client requires multiple design drafts or repeated changes that would significantly increase work required of the Designer. The Designer will not charge any fees in addition to those specified in this Contract without first consulting the Client and reaching an agreement regarding this. If it becomes necessary for the Designer to bring legal action to collect any sums due under these Terms and Conditions and the Design Agreement, the Designer shall be entitled to collect all damages.
- 2.5 Any additional work required that are beyond the scope laid out in the Design Agreement will be subject to renegotiation and a new Design Agreement.

3. RUSH DELIVERIES:

- 3.1 Should expedited or rush delivery be agreed an extra sum may be charged to cover any overtime or any other additional costs involved. These sums will be generally agreed beforehand.

4 COPYRIGHTS AND INTELLECTUAL PROPERTY RIGHTS:

- 4.1 The Designer makes no representations that design of any media for the client infringes upon any trademarks, trade names, service marks or other proprietary rights owned by a third party. The Client shall not hold the Designer liable for any damages, injuries or losses incurred by the Client as a result of any action instituted by a third party.
- 4.2 The Client must obtain permission for the Designer to use any material that is the copyright of a third party. Furthermore, the Client represents to the Designer and unconditionally guarantees:
 - 4.2.1 that any elements of text, graphics, photos, designs, trademarks, or other artwork furnished to The Designer for inclusion in the design project are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements;
 - 4.2.2 that icons, company names, and other information, which the Client prescribes to be used for the design project, will not:
 - 4.2.2.1 violate any international, national or local law or regulations;
 - 4.2.2.2 in any way violate or infringe upon any party's privacy right, right of publicity, or any other right of any person or entity;
 - 4.2.2.3 contain any material, which is unlawful, harmful, abusive, hateful, obscene, racist, threatening, libellous or defamatory.

- 4.2.3 that it will hold harmless, protect, and defend the Designer from any claim or suit arising from the use of such elements furnished by the Client. The Client will agree to indemnify and hold harmless the Designer from all claims resulting from any negligence or failure to obtain permission to use such copyright material.
- 4.3 the Client will give the Designer the right to publish and use all material provided by the client, such as graphics, photographs, logos and text.
- 4.4 All Intellectual Property Rights (including any patent, copyright, database rights, registered design, trade mark, trade name, know-how or industrial or intellectual property right subsisting anywhere in the world and any applications to protect any of the above) and goodwill in and relating to the design project (including all components developed and produced for the design project, the up-dates, format, art direction, look and feel and content) (the "Intellectual Property Rights" or "IPR") shall be owned by and vest absolutely in the Designer and to the extent that such rights are not automatically vested in the Designer, the Client will assign to the Designer with full title guarantee all such rights. The Designer may use all such intellectual property rights in any manner and for any purpose it chosen.
- 4.5 Transferral of the IPR from the Designer to the Client remains solely at the discretion of the Designer who is at liberty to charge a supplementary fee for this transferral.
- 4.6 Any transferal of physical property and/or intellectual property in any preliminary or completed work will only pass to the Client when the Designer has received in cash or cleared funds payment in full of the price of all the preliminary or completed work and all other work agreed to be carried out by the Designer for the Client for which payment is then due.
- 4.7 If, as a part of the Services, the Designer provides the Client with software/web applications, whether owned by the Designer or a third party, the Client agrees that the ownership of and all intellectual property rights in the software/web applications shall remain vested in the owner.
- 4.8 The Client will have a limited non-exclusive non-transferable licence to use only the software/web applications provided solely in connection with the Services. The Terms and Conditions of this license are contained in the end user license agreement that is included with the software/web applications. Any other use of or dealing with such software/web applications is strictly prohibited.
- 4.9 Copyright to the finished design project is owned by the Designer. Upon final payment of this Contract, the client is assigned rights to use the design, graphics, and text contained in the project (which is defined in the Design Agreement). . Rights to photos, graphics, source code, work-up files and computer programs are specifically not transferred to the Client and remain the property of their respective owners. The Designer retains the right to display graphics/ Web design elements as examples of work in the Designer's respective portfolios.

5 INDEMNITIES AND DISCLAIMER:

- 5.1 The Client agrees to fully indemnify and keep the Designer fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred and arising from any of the following:
- 5.1.1 the Client's breach of these Terms and Conditions and/or the Design Agreement or its negligence or other act, omission or default;
- 5.1.2 the operation or breakdown of any equipment or software owned or used by the Client
- 5.1.3 the Client's use or misuse of the Services
- 5.1.4 the Client infringing (whether innocently or knowingly) third party rights (including without limit IPR).
- 5.2 The Client indemnifies and holds harmless the Designer against any and all liability, loss, damage and expenses (including legal expenses) whatsoever arising directly or indirectly (which shall include consequential and indirect loss, loss of revenue profits, data, contracts, goodwill and anticipated savings) (all of which are referred to as "Damages") from any of the Client's acts or omissions, including those of the Client's employees, agents or sub-contractors, other persons the Client authorizes to use the Services, or persons who use or access the Services without authorization as a result of the Client's actions or omissions (each, a "User") including without limitation any breach by the Client of any of the terms of the Contract, or any content maintained, stored or transmitted by the Client in connection with the Services provided by the Designer.
- 5.3 This also means that, except as noted in Section 7, the Client has waived any claim against the Designer and the Designer will have no liability for any losses the Client may incur as a result of any delay, failure or error in the transmission of information or interruptions or deterioration of the quality of the Services.

6 LIABILITY

- 6.1 The Client is responsible for checking all proofs of work submitted by the Designer for client approval and the Designer shall incur no liability for any errors not corrected by the Client in proofs so submitted. Client alterations and additional proofs necessitated thereby may be charged extra. When style type or layout is left to the Designers best judgement, additional changes made by the client may be charged extra. In situations where no client representative is available to check such proofs and the Designer must make judgement for the sake of timely product delivery, the Designer will exercise all possible care, but shall incur no liability for any errors or omissions so caused. Similarly, if no Client representative is available to check final proofs, the Designer reserves the right to suspend production without liability until such a time as those proofs can be checked.
- 6.2 The Designer will not accept any liability for any error or variation of quality howsoever caused if the Product is not checked by the Client immediately upon delivery by the Designer to the Client. Product includes any artwork, film or bromide, positive or negative, proofs, colour matchproofs, visuals, or presentation material including any printed and/or finished material produced for the Client or a third party by the Designer. This also includes all banner advertisements and whole or part digital files or images created for broadcast on the Internet.
- 6.3 The Designer will endeavour to correct any unacceptable product, provided that the Designer is notified in writing prior to any subsequent production cycle. The Designer's liability in any such case will not exceed any in-house costs attributable to any one project as detailed on the

relevant quotation or estimate. On acceptance of the product the Client indemnifies the Designer from any cost incurred by him or a third party resulting from any Product supplied by the Designer and takes full responsibility for any error or variation of quality of any subsequent product.

- 6.4 Whilst every care is taken the Designer cannot accept responsibility for the loss or damage to artwork, photographs, transparencies etc. Any liability shall be limited to the replacement cost of the basic material only.
- 6.5 The Designer may reject any magnetic media; paper, plates or other materials supplied or specified by the customer, which appear to it to, be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or part of such additional cost could have been avoided but for unreasonable delay by the Designer in ascertaining the unsuitability of the materials then that amount shall not be charged to the Client.
 - 6.5.1 Where materials are so supplied the Designer will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by the unsuitability of materials so supplied or specified. Quantities of materials supplied shall be adequate to cover normal spoilage.
- 6.6 Every effort will be made to obtain the best possible reproduction on customer's work but because of the processes involved the Designer shall not be required to guarantee an exact match between the Client's original photograph, transparency or artwork and the printed or digitally published article. It is the Client's own responsibility to ensure that the photograph(s), transparency(ies) or artwork submitted are suitable for the work in hand. The Designer cannot accept liability for results caused by unsuitable or inferior originals.
- 6.7 Client's who require reproduction of a specific standard and who wish to check the reproduction prior to printing, must order a full colour proof when placing the order and accept any additional charges for unscheduled work required in the pursuit of such standards (such as special colours).
- 6.8 The Designer will make every endeavour to deliver the correct quantity of any items ordered for print, but estimates are conditional upon margins of 5% for work in one colour only and 10% for other work being allowed for overs and shortages. Refunds or additional charges for such variations may be made and shall be based upon the run-on costs specified within relevant quotations
- 6.9 Any standing material e.g. Metal, film, glass, magnetic media and other materials owned by the Designer and used by the Designer in the production of type, plates, moulds, stereotypes, film-setting negatives, positives, digital Internet broadcast and the like remain the Designer's exclusive property. Such items when supplied by the Client shall remain the Client's property. Under normal circumstances this standing material, including any original artwork, will be retained on file for a period of one year after which time the Designer reserves the right to dispose of it.
- 6.10 Client's property, including transparencies from any source (including photo libraries), and all property supplied to the Designer on behalf of the Client shall while it is in the possession of the Designer or in transit to or from the Client be deemed to be at the Client's risk and the Client should insure accordingly.
- 6.11 Should work be suspended at the request of or delayed through any default of the Client for a period of 30 days the Designer shall then be entitled to payment for work already carried out and reserves the right to alter estimated costs for such work when viewed outside of a project context. Estimates would be altered for example where materials specifically ordered and any other additional costs including storage.
- 6.12 If there is any delay with respect to the provisions of Client Materials, approvals, or other assistance to the Designer the deadline for subsequent tasks or milestones given in the Design Agreement shall be extended by a period at least equal to the client's delay. In addition, for any client obligation described as time sensitive or critical, failure of the Client to meet its deadline will entitle the Designer to prepare a revised Schedule based on a realistic estimate of the effect of the delay on the completion of work, taking into account other work scheduled by the Designer.
- 6.13 Once Colin Miller Freelance Web Design has undertaken a commission for services, a cancellation fee of 75% will apply if the contract is terminated through no fault of Colin Miller Freelance Web Design.

7 WARRANTIES AND LIMITATION OF LIABILITY:

- 7.1 All warranties, conditions, undertakings or terms, express or implied, written or oral, statutory or otherwise, in respect of the Services are excluded to the fullest extent permitted by law, except as expressly provided in these Terms and Conditions and Design Agreement.
- 7.2 The Client acknowledges that the fee is determined (and the Designer would not be willing to provide the Services except) on the basis of the exclusions from and limitations of liability contained in these Terms and Conditions and the Design Agreement. The Client expressly agrees that these exclusions and limitations are commercially reasonable.
- 7.3 The Client agrees that, to the fullest extent permitted by law and except as noted in this Section 6, the Client's sole and exclusive remedy against the Designer for any claim, whether arising out of contract, tort, and misrepresentation or otherwise, will be to terminate this Contract.
- 7.4 The Client further agrees that in no event shall the Designer's liability with respect to any event or series of events or connected events arising out of or relating to these Terms and Conditions and Design Agreement exceed the amount paid by the Client for the Services.
- 7.5 The Client shall have no right to make a claim against the Designer (and the Client is hereby waiving all such rights) except where the Client notifies the Designer in writing of the circumstances giving rise to such claim within two (2) months and issue legal proceedings against the Designer within six (6) months of the date that the Client knows or reasonably should have known of the Client's right to bring such a claim.
- 7.6 The Designer acknowledges that nothing in this Section 6 will limit the Designer's liability to the Client for fraudulent misrepresentation or death or personal (physical) injury resulting from the Designer's negligence. However, this is not intended to provide the Client with a right or remedy, which the Client would not otherwise have.
- 7.7 This Section 6 shall survive the termination of the whole or a part of the Contract.

8 DISPUTES:

- 8.1 The Client agrees that before resorting to any third party relief (including the courts), the Client will attempt to resolve the dispute by notifying the Designer by electronic mail or registered post of the Client's complaint. The Designer agrees to review such complaint and notify the Client in writing of his findings within twenty (20) business days following the receipt of the Client's notice.

9 CONFIDENTIALITY:

- 9.1 The Designer acknowledges that the Design Agreement creates a confidential relationship between the Designer and the Client and that information concerning the Client's business affairs, customers, vendors, finances, properties, methods of operation, computer programs and documentation and other such information, whether written, oral, or otherwise, is confidential in nature.
- 9.2 If the Designer collects personal information in connection with this agreement, the Designer will treat and use the information in compliance with the provision of all relevant data protection laws, including, if applicable, the Client's right to access personal data and to request at any time any amendment or corrections or removal thereof.

10 MISCELLANEOUS:

- 10.1 If any provision of these Terms and Conditions or the Design Agreement is held to be unenforceable, illegal or void in whole or in part, the remaining portions of the Terms and Conditions and Design Agreement shall remain in full force and effect.
- 10.2 Any notices under these Terms and Conditions and/or the Design Agreement shall be sent to Colin Miller 30 Esdaile Gardens, Upminster. Essex RM14 1BU, unless specifically instructed in writing to do otherwise.
- 10.3 The Client may not assign these Terms and Conditions or Design Agreement, or assign the Client's rights or delegate the Client's obligations under these Terms and Conditions and Design Agreement without the Designer's written consent. The Designer may, at his discretion, assign these Terms and Conditions and the Design Agreement and his rights and delegate his obligations under these Terms and Conditions and the Design Agreement to any of the Designer's affiliates or to any company that acquires the Designer's business or assets.
- 10.4 The Terms and Conditions and the Design Agreement shall be governed by the laws of England and Wales.

11 PAYMENT:

- 11.1 Unless otherwise agreed in the Design Agreement, 30% of the fee detailed in the Design Agreement will be payable on Client acceptance of these Terms and Conditions, and before work on the project commences. The remaining 70% is to be paid on completion of the project.
- 11.2 The Designer shall invoice the Client for the Services rendered in accordance with the Design Agreement, and these Terms and Conditions. The Client shall have a period of fourteen (14) days from date of invoice to satisfy any and all charges.
- 11.3 Accounts remaining unpaid after thirty (30) days from the date of the invoice will be deemed to be in default until such time as full payment is received. For all accounts in default, the Designer reserves the right to charge interest at the rate of 1% per calendar month of the outstanding balance.
- 11.4 Cheques returned unpaid due to insufficient funds will be assessed a service charge of £25. If an account remains unpaid after forty business days of the date of invoice the Designer will commence legal proceedings to recover the debt. The Client will be held liable for all costs incurred by the Designer in recovering the debt.

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