



Room 58 Limited

Terms of Business

1. Important

All business is conducted and orders are accepted subject to the Terms of Business set out below. They contain certain matters effecting rights and liabilities and you are advised to read them.

2. Interpretation

In these Terms:

“the Company” means Room 58 Limited

“the Customer” means the party to whom the products or services are supplied by the Company

“Contract” means any quotation or signed contract or estimate of the Company any order accepted by the Company and these Terms

“Customer Property” means the Customer’s original artwork samples software files or other materials supplied to the Company

“Intellectual Property Rights” means all patents trade and service marks registered and unregistered designs copyright know-how confidential information trade or business names, applications for the foregoing and any other similar protected rights

“Products and Services” means the products and or services supplied under the Contract

“Third Party Creative Works” means photography illustrations or other contracted third party creative services or products

“Approved credit accounts” means companies with turnover in excess of £3million can apply for and have been accepted for extended credit terms.

3. Terms

These Terms shall apply to all orders placed by the Customer with the Company and shall supersede any previously published terms and conditions of business and shall override any terms and conditions stipulated, incorporated or referred to by the Customer in its order or negotiations (unless otherwise expressly agreed in writing by a Director of the Company).

4. Quotations

All quotations given by the Company are valid for a period of 30 days only from the date of such quotation (verbal or written). If the Customers' order instructions differ from the specification understood when the quotation was given, the Company reserves the right to alter the price and/or terms of any quotations previously given.

5. Orders

Verbal instructions are accepted only on the understanding that the Company cannot be held responsible for mistakes arising there from.

The Company shall be entitled to subcontract any service it agrees to perform for any Customer, however the Company remains responsible for delivery and quality of goods/services supplied.

6. Co-operation

The Company will co-operate fully with the Customer's organisation and will use all reasonable efforts to carry out the Services in an appropriate time and manner.

The success of the Services will be dependent on the Customer making available to the Company all relevant information and by co-operating fully wherever necessary.

In particular the Customer agrees to give a clear brief and ensure that all facts and information given to the Company about Products or Services are complete and accurate and in no way misleading.

7. Standard of Services

The Company will provide those Products and Services which have been specifically agreed with the Customer in writing.

The Company undertakes to use its skill and expertise to provide the Customer with a quality service which meets the brief agreed with the Customer.

If for any reason the Products or Services do not meet with the Customer's reasonable satisfaction, the Customer must notify the Company in writing within 10 working days of the matter coming to the attention of the Customer, setting out in sufficient detail the matter complained of or the Customer will be deemed to be satisfied with the quality and standard of the Product or Services.

The Company reserves the right to record Customer telephone calls in order to improve services or better understand client instructions or requests.

8. Cancellation and Amendments

The Customer may by written request to the Company cancel or stop any and all plans, schedules or work-in progress and the Company shall take all reasonable steps to comply provided that the Company can do so within its contractual obligations to suppliers and other third parties.

In the event of any cancellation of works by the Customer the Company shall be entitled to recover from the Customer any external and internal charges or expenses incurred on the Customer's behalf and to which the Company is committed and the Company's fees covering the work already carried out on behalf of the Customer or 30% of the contract value whichever is the greater.

The customer may request amendments to the original specification and the Company will use its best endeavours to comply with the Customer's request. In these circumstances the Company reserves the right to adjust the price of the Products and Services to reflect the amendments.

In the event of cancellation to a "Contract" such as "Design Box" the customer must give one month's notice in writing to stop its contractual obligations, at such point the Company shall be entitled to recover from the Customer all outstanding monies due plus 30% of the remaining contract value.

9. Ownership of copyright and other rights and materials

The Company shall retain the copyright in any material contained in any presentation made in competition with any other agency in the event of its presentation being unsuccessful or any other material produced speculatively by the Company and not used, whether or not in competition with another agency.

Title to and ownership of all materials, Intellectual Property and moral rights in any work undertaken by the Company shall subject and without prejudice to the other terms set out herein at all times belong to the Company until all invoices relating to the all services have been paid in full by the Customer.

Third Party Creative works remain the Intellectual Property of the third party supplier or as agreed by the third party supplier and the Company. The Customer shall be entitled to use such works for the purposes supplied under the Contract on payment of the agreed fees but this does not transfer Intellectual Property in the Third Party Creative Works. Additional usage or transfer of Intellectual Property in Third Party Creative works outside of the Contract will not be unreasonably withheld by agreement with the Company or by a fee agreed with the Company.

It is the practice of Suppliers of computer software products or copies thereof ("proprietary software") to retain title to the Intellectual Property therein. The limit of the right or interest in any such proprietary software which the Customer shall receive shall be such right or licence to use or enjoy such proprietary software as may be permitted or conferred by the Company or by the owner of the Intellectual Property therein and shall be subject to the Supplier's terms and conditions relating to such use a copy of which is available from the Company on request.

The Company shall have no liability to the Customer in the event that any proprietary software supplied by the Company infringes the rights in Intellectual Property of a third party

The Company's liability to the Customer in respect of any claim that software created by the Company (not being proprietary software) and supplied to the Customer infringes the rights in Intellectual Property of a third party shall be determined by the provisions of the licence issued by the Company to the Customer in respect of such software and shall be conditional upon the Company having sole control of the defence and all negotiations for settlement or compromise of any such claim

The Customer accepts sole responsibility for any claim of copyright infringement brought by a third party against the Customer's use of Third Party Creative works outside of that permitted by the Company and

indemnifies the Company for any losses or expenses it suffers (including legal costs) in relation to any such claim.

Where the Customer provides facts images and/or sound ("works") that are to be reproduced by the Company or used in the completion of an order the Customer warrants that it is the proper holder of all copyrights attaching to those works.

10. Intellectual Property Rights Indemnity

Each party will indemnify the other against all costs, claims, demands, expenses and liabilities arising out of or in connection with any claim that the normal use or possession of the Products or Third Party Products by the Customer (whether used separately or in combination) infringes the Intellectual Property Rights of any third party.

11. Software

The Customer shall be entitled to the non-exclusive use of the Company's Software supplied under the Contract subject to the following :-

The Intellectual Property vested in the Software remains the property of the Company

The use shall be restricted to that for which the Software is supplied. No Licence is granted for general reproduction resale or transmission.

The Customer may not modify adapt rent sell or create derivative works based on the Software in whole or part without the Company's express written authority

The Customer will observe and comply with any Licences provided with the Company's Software.

The Customer shall only be entitled to use Third Party Software supplied under the Contract in accordance with the Terms of the Licences for that Software.

When the Company supplies Software or other computer-based materials it will deliver executable code that the Customer will have full rights to use subject to these Terms.

The Company will not include source code which is the Company's proprietary information.

The source code may be available for purchase by the Customer on payment of a separate fee to be agreed between the Company and the Customer.

If the Customer wishes to purchase the source code they should inform the Company as soon as possible.

12. Accounts and Payment

"Approved credit accounts" are subject to settlement in full within thirty days of date of the invoice. In all other cases full payment is required with order unless otherwise agreed in writing by the Company.

New accounts are opened subject to the provision of two trade references acceptable to the Company and a bank reference, or such other criteria as the Company may from time to time determine.

The Company reserves the right to charge interest at the rate of 4% per annum over the HSBC base lending rate from time to time for late settlement of accounts.

IMPORTANT INFORMATION

At any time during or any time after the business relationship, title to and ownership of all materials, Intellectual Property and moral rights of any nature in any work undertaken by the Company shall belong to the Company ***until all invoices relating to all services have been paid in full by the Customer.***

The company shall be entitled to a general lien on all property of the customer in the Company's possession until all sums due and payable to the Company by the customer have been paid.

The Company reserves the right to withdraw any services (including web services), withhold any customer data or materials of any nature until all outstanding monies are collected.

13. Guarantee and Exclusion of Company's Liability

Subject to the terms set out below the Company warrants:

That the Products will correspond with their Specification at the time of delivery and be free from defects in material and workmanship and; the Services will be provided with reasonable skill and care.

The Company shall not be liable under the above warranty: -

Unless a claim for a defective Product is made within 10 days of collection by the Customer or delivery by the Company of the Products by returning all the Products in question with a copy of the written order.

In respect of any defect or fault arising from fair wear and tear wilful damage negligence abnormal storage or working conditions.

Failure to follow the Company's instructions misuse or use of the Products by inexperienced or untrained persons

If the total price for the Contract has not been paid by the due date for payment.

In respect of Third Party Products or materials in which the Customer shall only be entitled to such warranty as is given by the Third Party Supplier to the Company.

Subject as expressly provided in these Terms all warranties conditions or other Terms implied by statute or common law are excluded to the fullest extent permitted by law.

Where any valid claim in respect of any of the Products which is based on any defect in the quality of the Products or the failure to meet specification is notified to the Company in accordance with these Terms the Company shall be entitled to replace the Products (or the part in question) free of charge or at the Company's sole discretion refund to the Customer the price of the Product (or a proportional part of the price) but the Company shall have no further liability to the Customer.

Except in respect of death or personal injury caused by the Company's negligence the Company shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any indirect special or consequential loss or damage (whether for loss of profit or otherwise) which arise out of or in connection with the supply of the Products or Services and the entire liability of the Company under the Contract shall not (except as expressly provided in these Terms) exceed the price of the Contract.

14. Customer Property

Whilst every care is taken in handling the Customer Property the Company accepts the Customer Property on the understanding that this is entirely at the Customer's risk.

Unless otherwise agreed in writing the Company's liability if the Customer Property is lost destroyed or damaged will be limited to the replacement cost of the materials.

The Company advises the Customer to keep backup copies of all Customer Property and to insure Customer Property for the full value against all risks loss or damage.

15. Confidential Information

Parties hereby undertake to each other to keep confidential all information (written or oral) concerning the business and affairs of the others that they shall have obtained under the Contract or which it has been advised is confidential in nature save that which is trivial or obvious or already in its possession other than information in the public domain or information relating to outstanding invoices which remain unpaid by the Customer.

The Parties shall use best endeavours to prevent disclosure of confidential information in accordance with this clause.

16. Non-Solicitation

The Customer agrees and undertakes to the Company that at no time during or within one year of termination of the Company's appointment to provide the Products and Services will the Customer solicit or offer employment to any of the employees of the Company with whom the customer has dealt.

17. Delivery

Delivery instructions undertaken will be adhered to as closely as possible but no responsibility can be accepted for delays.

18. Entire Agreement

The Contract constitutes the entirety of the agreement between the Company and the Customer. No variations of or additions to the same shall be of any legal effect and no employee or agent of the Company is authorised to make any representation binding upon the Company unless such variation or addition is made in writing and signed by a Director of the Company.

19. Force Majeure

The Company shall not be liable for any failure to perform the Contract due or principally due to any circumstances beyond its control including but not limited to inability to secure labour, materials, supplies or transport, scarcity of fuel power or components, breakdowns in machinery, fire, storm, flood or Act of God, war, civil disturbance, strikes, lock-outs and industrial action in whatsoever form.

20. Severability

If and to the extent that any provision or any part of a provision of the Company's Standard Conditions is illegal, void or unenforceable for any reason, then such provision or part thereof (as the case may be) shall be deemed to be severable from the remaining provisions or parts of the relevant provisions (as the case may be) which shall remain in full force and effect.

21. Governing Law

These Terms and Conditions and any questions, disputes or other matters relating to them shall be governed by and determined in accordance with the laws of England.