

ORGANISED CONFUSION

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A Trading Division of Organised Confusion Media Ltd.

Registered in England & Wales Company No. 7970917



# ORGANISED CONFUSION

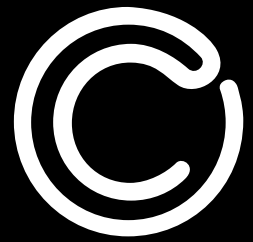
Graphic Design Terms of Business



# GRAPHIC DESIGN STANDARD TERMS OF BUSINESS

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## **["THE AGREEMENT"]**

These are the terms and conditions that apply to the relationship between Agency and Client in connection with the provision of the Design Services. Their purpose is to regulate the relationship between Client and Agency and to ensure that Client understands what it can expect of Agency, and what Agency is expected to do.

### **This Agreement is a legally binding agreement between:**

(1) ORGANISED CONFUSION MEDIA LIMITED whose registered office is at 1 The Nova Centre, Purser Road, Abington, Northampton, NN1 4PG with registered company no. 7970917 ("Designer");

and

(2) the company that is identified in Section 1.2 of the Heads of Agreement ("Client"), together known as "the Parties".

### **1. Interpretation**

1.1 In this Agreement unless the context otherwise requires:

- (a) the terms set out in the Schedule shall have meanings ascribed to them therein;
- (b) words importing the singular number include the plural number and vice versa;
- (c) words importing persons include firms, companies and corporations and vice versa;
- (d) references to numbered Clauses are references to the relevant Clauses in this Agreement;
- (e) the headings to the Clauses and paragraphs of this Agreement will not affect the interpretation;
- (f) any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment;
- (g) any Party which agrees to do something will be deemed to fulfil that obligation if that Party procures that it is done.

### **2. Appointment of Agency**

Client appoints Agency on an exclusive to carry out the Creative Services as detailed in Section 2.1 of the Heads of Agreement.

### **3. Term**

- 3.1 This Agreement shall remain in force between Client and Agency for the duration of the Creative Services as set out in Section 2.1 of the Heads of Agreement or, where an ongoing retainer is there described, for an indefinite period, subject to notice as set out in Section 5.1 of the Heads of Agreement.
- 3.2 Rights to terminate early, suspend or cancel early, and the consequences thereof, are set out in Clause 13 below.

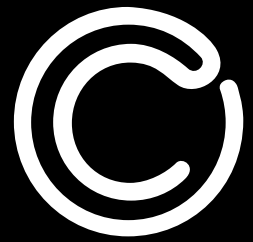
### **4. Remuneration**

- 4.1 Client shall pay the basic Remuneration as set out in Section 3.1 of the Heads of Agreement.
- 4.2 Further, if Client wishes to change the scope of the Design Services or the requirements of the work to be carried out or if it unreasonably fails to approve work or causes work to be repeated or duplicated, Designer may invoice Client in respect of all additional time spent on the Design Services at its then current rate as contained in its Rate Card.
- 4.3 Client shall reimburse Designer in full for all sums due in respect of all reasonable third party contracts entered into by Designer in order to comply with its obligations hereunder. Designer may also charge a reasonable handling fee of 25% for any third party contracts.

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- 4.4 Client shall reimburse Designer at cost in respect of all reasonable office expenses directly attributable to the Design Services.
- 4.5 All sums due under this Agreement shall be payable together with VAT and any like taxes or charges at the prevailing rate as and when they fall due.
- 4.6 All invoices shall be paid by Client within 30 days of delivery and late payment of any invoices shall be subject to interest at the rate as specified from time to time under the Late Payment of Commercial Debts (Interest) Act 1998.

## 5. Designer's Duties

- 5.1 Designer shall exercise all reasonable skill and care in carrying out its obligations under this Agreement. Where any dates/timeframes are set out in the description of the Design Services, Designer shall endeavour to comply with such dates/timeframes but time shall not be of the essence and no liability shall attach to Designer in the event that it is unable to meet such deadlines as a result of delays caused by Client or third party contractor(s) or by any other reason outside of Designer's control.
- 5.2 Each Party shall provide the other with all reasonable assistance in fulfilling the latter's obligations hereunder.

## 6. Third Party Suppliers

- 6.1 Where photography, printing or other third party suppliers is/are to be commissioned as part of the Design Services:
  - 6.1.1 Designer shall exercise all reasonable skill and care in its selection or recommendation of such third parties, but it is not responsible for the quality of the goods or services so provided save that it will use its best endeavours to oversee and manage production processes.
  - 6.1.2 Client is and remains responsible for approving print specifications, layouts, photographs and other draft materials, for approving third party suppliers' terms and quotations, and for providing final approval and signoff.

## 7. Infringements

- 7.1 Client shall be solely responsible for taking whatever action it considers necessary and proper in connection with any infringement, suspected or threatened infringement, passing off, or other unlawful interference with any Intellectual Property Rights to be assigned to Client under Clause 9.
- 7.2 Designer shall at Client's expense provide any assistance reasonably required by Client, including but not limited to being joined as a party in proceedings before any court or tribunal, in relation to any action the Client decides to take under Clause 7.1 above.

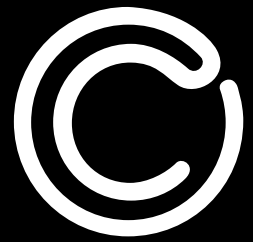
## 8. Client Obligations

- 8.1 Client shall be responsible for ensuring that all products or items made, published or otherwise used under or following the Design Services shall comply with all local laws wherever such products or items appear. This obligation includes (but is not limited to) advertising, marketing and broadcasting laws and regulations, and product safety, liability marketing, packaging, and labelling laws and regulations.
- 8.2 Client warrants, represents and undertakes to and with Designer that it will not be in breach of any contractual obligation binding on it by reason of it entering into this Agreement or of it performing its duties hereunder.
- 8.3 Client warrants, represents and undertakes to Designer that it will obtain all necessary rights in relation to the use and reproduction by Designer for the purposes of the Design Services of any works supplied by the Client.
- 8.4 Client shall not make any changes to the designs, graphics, works, schemes or other such items produced by Designer under the Design Services without Designer's prior written approval (which shall not be unreasonably withheld where the proposed change would not harm the integrity of such work or the reputation of Designer).

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## 9. Intellectual Property Rights and Title

- 9.1 Subject to Clause 9.3 any new Intellectual Property Rights arising in the subject matter of the Design Services and in any other materials provided to Client by Designer during the Term of this Agreement shall be owned by Designer save insofar as set out to the contrary in Section 4 of the Heads of Agreement.
- 9.2 Only the final version of work chosen or approved by Client will be subject to the Intellectual Property Rights provision in Section 4 of the Heads of Agreement. All other rights, including in other works developed or suggested during the course of the Design Services and which have not been chosen or approved by Client, remain the exclusive unfettered property of Designer and are not available for use by Client in any manner unless Designer so agrees in writing and after agreement on the level of additional payment which it will receive.
- 9.3 On completion of the Design Services, and subject to Client complying with its obligations hereunder including (but not limited to) making all payments due, Designer will grant to Client such rights as are specified in Section 4 of the Heads of Agreement, for which purpose Designer will at Client's expense enter into such documents and do such other things as Client may reasonably require.
- 9.4 Intellectual Property Rights will be assigned by Designer to Client only for ownership and use by Client in the media or field of use as set out in Section 2.2 of the Heads of Agreement and in the Territory as set out in Section 2.3 of the Heads of Agreement. Designer will give good faith consideration to extending the ambit of such assignment on Client's written request, provided that agreement can be reached as to the level of additional remuneration due in consequence to Designer.
- 9.5 Where any Intellectual Property Rights are assigned to Client, Client is solely responsible for making such applications for registration as may be required and paying all applicable fees and expenses but Designer will at Client's expense provide Client with all reasonable assistance in order to obtain such protection.
- 9.6 Risk in all physical materials derived from the Design Services shall pass to Client on delivery.
- 9.7 Title in the physical materials derived from the Design Services shall pass to Client only when payment of all sums due has been made by Client to Designer.
- 9.8 Client may not use (including, production, exhibition, advertising or marketing) any designs, graphics, works, Intellectual Property Rights, products, prototypes, or other physical materials derived from the Design Services until payment of all sums due from Client to Designer has been made.

## 10. Warranties

Designer warrants that it will not knowingly infringe or copy any third party Intellectual Property Rights. However, Designer cannot and does not warrant that Client will be immune from the rights or claims of others due to the complexity of the laws and regulations governing Intellectual Property Rights. In particular, Designer does not undertake any searches or research concerning potential third party rights and recommends that Client undertake such searches or research on advice from Client's own advisors.

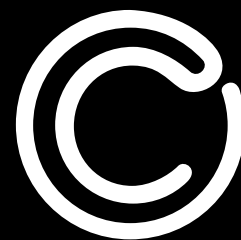
## 11. Confidentiality

- 11.1 The Parties agree to keep this Agreement and its contents and any non-public information which passes between them under the Design Services confidential save as set out herein or insofar as otherwise required by law.
- 11.2 Notwithstanding Clause 11.1 above, Designer shall be free to refer to and use the fact of the Design Services in its professional credentials including (but not limited to) AV presentations, brochures, newsletters, exhibition materials, advertising, press releases and use on its website.
- 11.3 Client shall credit the Design Services as being the work of Designer whenever it refers to or uses work derived from the Design Contract, including (but not limited to) press release(s), exhibition, product launch or other such activity.
- 11.4 This Clause 11 shall survive termination of this Agreement.

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## 12. Limitation of Liability and Indemnity

- 12.1 Save as expressly set out herein, Designer excludes all warranties, conditions or other terms that may be implied into this Agreement whether by law, statute or otherwise.
- 12.2 Designer gives no warranty, condition or other term whatsoever, either express or implied, including (but not limited to) as to merchantability, satisfactory quality, fitness for a particular purpose, or non-infringement of Intellectual Property Rights.
- 12.3 Designer shall not be liable in contract, tort or otherwise for any loss or damage, howsoever arising in connection with the Design Services or this Agreement, or for any indirect, special, or consequential damages, and whether such damages or losses (or the risk thereof) were known, unknown, foreseen, foreseeable, unforeseen or unforeseeable.
- 12.4 Further and in any event Designer shall not be liable to Client for any sum in excess of the payments made hereunder to Designer by Client.
- 12.5 Nothing in this Agreement shall limit Designer's liability for negligently caused death or personal injury or fraud.
- 12.6 Client agrees to indemnify and hold Designer and Designer's subsidiaries, affiliates, officers, agents and employees harmless from and against any third party claim arising from or in any way related to the Design Contract, including (but not limited to) any liability or expense arising from any and all claims, losses, damages (actual and consequential), suits, judgments, and legal costs, of every kind and nature SAVE WHERE AND INSOFAR AS Designer has breached its express obligations hereunder.
- 12.7 Designer sets its level of remuneration taking into account the exclusions and limitations of liability as set out in this Clause 12. Without such exclusions and limitations, it would charge a higher level of remuneration.

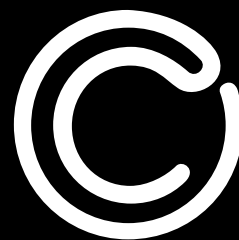
## 13. Term and Termination

- 13.1 Either Party may terminate this Agreement forthwith on giving notice in writing to the other if the other:
  - (a) commits any material breach of any material term of this Agreement and (in the case of a breach capable of being remedied) fails to remedy the breach, within 30 days after receipt of a request in writing to do so specifying the breach and the action needed to remedy the same; or
  - (b) enters into liquidation, bankruptcy, or other insolvency procedure, whether compulsorily or voluntarily, other than for the purposes of reconstruction or amalgamation; or
  - (c) fails to pay its debts or enters into an arrangement or composition with its creditors or convenes a meeting of its creditors or ceases or threatens to cease to carry on its business; or
  - (d) has a provisional liquidator, a trustee in bankruptcy, an administrator or administrative receiver appointed over all or a substantial part of its assets.
- 13.2 The terms used in Clause 13.1 shall have the meaning given to them in the Insolvency Act 2000.
- 13.3 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement.
- 13.4 In the event of any such termination by Designer:
  - (a) all and any sums which would have fallen due in the future shall become immediately payable in full by Client; and
  - (b) Designer shall not be required to grant any Intellectual Property Rights to Client as set out in Section 4 of the Heads of Agreement or Clause 9 above or otherwise howsoever.

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- 13.5 Client may cancel this Agreement at any time provided that:
- 13.5.1 it gives any notice as specified in Clause 3.1 above; and
  - 13.5.2 it pays all sums due to date; and
  - 13.5.3 it pays such further sums (calculated at Designer's then current hourly rate) as represents the value of work undertaken by Designer in respect of which payment has not yet been made (including but not limited to payments in respect of work which has not yet reached what would otherwise be the next stage payment or benchmark); and
  - 13.5.4 it pays a cancellation charge of 20% of the balance of the payments which would otherwise have fallen to be made under Clause 4 between the date of such cancellation and the date on which this Agreement would otherwise have terminated.
- 13.6 Designer may cancel this Agreement at any time if Client ceases to give instructions, or seeks to suspend or alter the timetable, or otherwise acts so as to end, delay or reduce the level or frequency of payments which would otherwise have been made to Designer hereunder. In the event of such cancellation Client will make to Designer payments as set out in Clause 13.5 above.
- 13.7 In the event of any such cancellation by Client or by Designer, Designer shall not be required to grant any Intellectual Property Rights to Client as set out in Section 4 of the Heads of Agreement or Clause 9 above or otherwise howsoever.

## 14. Amendments

Save as expressly permitted under this Agreement, the Parties' obligations under this Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties.

## 15. Assignment

Neither this Agreement nor any rights, licences or obligations under it, may be assigned by Client SAVE THAT it may assign this Agreement to successors in title with the prior written approval of Designer.

## 16. Entire Agreement

This Agreement and the Heads of Agreement supersede all prior agreements, arrangements and undertakings between the Parties and constitute the entire agreement between the Parties relating to the subject matter of this Agreement.

However, the obligations of the Parties under any pre-existing non-disclosure agreement shall remain in full force and effect insofar as there is no conflict between that and this Agreement. The Parties confirm that they have not entered into this Agreement on the basis of or in reliance upon any representation that is not expressly incorporated into this Agreement.

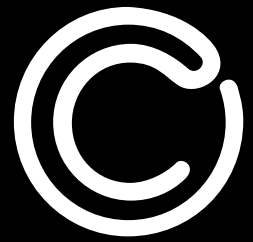
## 17. Notices

- 17.1 Any notice to be given under this Agreement shall be in writing and shall be sent by first class mail, email, or by fax to the address of the relevant party set out at the head of this Agreement or such other address as that party may from time to time notify to the other party in accordance with this Clause 17.1.
- 17.2 Notices sent as set out in 17.1 above shall be deemed to have been received 3 working days after the day of posting (in the case of inland first class mail), or 7 working days after the date of posting (in the case of airmail), or on the same working day in the case of an email or fax transmission sent before 1600 hrs (in the case of fax messages, but only if a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine, confirming that the fax was sent to the number indicated above and confirming that all pages were successfully transmitted), and in the case of an e-mail transmission, only if receipt of that e-mail is acknowledged by the recipient.
- 17.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and dispatched and dispatch of the transmission was confirmed and/or acknowledged as the case may be.

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## 18. Severance

If any provision of this Agreement is prohibited by law or judged by a court of competent jurisdiction to be unlawful, void or unenforceable, that provision shall, to the extent required, be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement, and shall not in any way affect any other circumstances pertaining to this Agreement or the validity or enforcement of this Agreement.

## 19. Successors and Assignees

19.1 This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors and expressly permitted assignees, and references to a Party in this Agreement shall include its successors and expressly permitted assignees.

19.2 In this Agreement references to a Party include references to a person:

- (a) who for the time being is entitled (by expressly permitted assignment, novation or otherwise) to that party's right under this Agreement (or any interest in those rights); or
- (b) who, as administrator, liquidator or otherwise, is entitled to exercise those rights; and
- (c) in particular those references include a person to whom those rights (or any interest in those rights) are transferred or pass as a result of a merger, division, reconstruction or other reorganisation involving that Party. For this purpose, references to a Party's rights under this Agreement include any similar rights to which another person becomes entitled as a result of a novation of this Agreement.

## 20. Waiver

No delay, neglect or forbearance on Designer's part in enforcing any term or condition of this Agreement against Client shall be or be deemed to be a waiver or in any way prejudice any of Designer's rights under this Agreement. No right, power or remedy in this Agreement conferred upon or reserved for Designer is exclusive of any other right, power or remedy available to Designer.

## 21. Third Parties

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

## 22. Proper Law and Jurisdiction

This Agreement and its validity and all matters arising from it shall be governed by and construed according to the laws of England and Wales and shall be subject to the [exclusive/non-exclusive] jurisdiction of the courts of England and Wales. In the event of any dispute which does not require urgent resolution, neither Party shall institute any Court proceedings until it has first endeavoured to agree with the other a different way of resolving the dispute, for which purposes both Parties shall give good faith consideration to agreeing to participate in a mediation or other form of alternative dispute resolution.