



Terms & Conditions



Creative Design for Web & New Media

Unit 110, Grove Business Centre, Grove Technology Park, Wantage, Oxfordshire, OX12 9FA | +44 (0)1235 771 917 | enquiries@hutchhouse.com
Hutchhouse Ltd. is a registered company in England: 4857805 & Vat Registered GB 851 4965 05

1: Terms and conditions

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 the Agency from the Client (see definition below) from time to time unless otherwise agreed in writing. The communication of a request by the Client to the Agency 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 the Agency and the Client.

2: Definitions

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

- 2.1 'Agency' means the Hutchhouse Limited, a company registered in England number 04857805;
- 2.2 'Brief' means the written brief describing the Deliverables, their intended use and any pre-set timings for supply, signed by the Client and supplied to the Agency in advance of conclusion of the Contract;
- 2.3 'Client' means the person, firm or company described as such overleaf;
- 2.4 'Contract' means the contract consisting of the front and back of this form and concluded by either the Client signing overleaf and returning it to the Agency or the Agency starting work on the Deliverables;
- 2.5 'Deliverables' means the services and/or materials to be supplied by the Agency under this Contract, described in brief overleaf and in more detail in the Brief;
- 2.6 'Job Cost' means the fee to be charged by the Agency for the Deliverables and specified on the front of this form;
- 2.7 'Project' means the job described overleaf; and
- 2.8 'Intellectual Property 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.

3: The Agency's obligations

The Agency 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.

4: Compensation

In return for the Agency's production and supply of the Deliverables the Client shall pay the Job Cost in accordance with the payment schedule set out overleaf. Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Agency on the due date, the Agency may charge the Client interest at 8% per year above the base rate of Lloyds TSB Plc from time to time accruing daily and compounded annually on every invoice overdue for payment calculated from the date of the invoice until the date of payment whether before or after judgment, and may suspend all of its obligations hereunder until payment has been made in full. The Agency reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998. The Agency reserves the right to require the Client to pay the total Job Cost up front before the Agency commences any work. If a final Job Cost has not been agreed at the time of concluding the Contract, the Agency will require the Client to pay a percentage of the estimated total Job Cost in advance to cover the Agency's time attending meetings and/or producing Deliverables in advance of a final sign-off by the Client of the budget.



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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 the Agency with materials, information, instructions or authorisations, supply of faulty materials to the Agency by the Client, or any other circumstances beyond the Agency's control, will be subject to extra charges for the Agency's time and work and may involve delays in supply. The Client will pay these extra charges and reimburse the Agency for any third party charges or expenses incurred by the Agency on the basis of the original Brief.

6: Production

Unless otherwise agreed in writing the Agency 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 the Agency 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

Written approval by the Client of final copy, layouts, scripts, storyboards, designs and the like will be the Agency's authority to proceed with production or publication as appropriate. Where artwork or other material is sent to the Client for final approval, the Client shall check it carefully and notify the Agency by email, fax or post of any errors or alterations. The Agency will use its reasonable endeavours to effect any changes so notified but the Agency reserves the right to charge extra if any of these alterations either go beyond the original Brief or are notified to the Agency 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, the Agency will not be liable in respect of any such errors. The Agency 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. The Agency cannot guarantee that any or all colours will be exactly replicated in the final version as published.

8: Rights

The Client shall have a royalty free licence, 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 overleaf and/or the Brief. If the Client wishes to use the Deliverables in ways going beyond the parameters in the Brief and/or overleaf, it must approach the Agency for prior written consent. In so far as use of the Deliverables as per the Contract involves use of third party material, the Agency will secure such licence as is necessary to allow the required use of the same.

Subject to the above and to the rights of any third party, ownership of the Rights shall remain vested in the Agency unless and until any assignment or other disposition of the Rights is agreed between the parties in writing. For the avoidance of doubt, where the Agency 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. 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. The Agency will endeavour to notify the Client of these as soon as practicable during the production process.



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9: Compliance

It shall be the sole responsibility of the Client to ensure that the Deliverables including text, graphics, photographs, designs and any other artwork 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 and that you the Client has the permission to use the same. 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 and hold harmless the Agency and the Agency's 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.

10: Publicity and examples

Notwithstanding the licence described in clause 8 above or any other disposition of the Rights agreed between the parties, the Agency shall have a continuing right to use the Deliverables for the purposes of advertising or otherwise promoting the Agency's work. The Client shall unless otherwise agreed mark all design work supplied as part of the Deliverables with the phrase 'Design by Hutchhouse Limited' (or appropriate variants as agreed) in a suitable place.

11: Expenses

The Agency will, where practicable, endeavour to estimate 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, for example couriers, print-outs, scans and overtime, will be invoiced by the Agency at cost and the Client shall pay such invoices within 14 days of the date of the invoice. Where expenses are likely to be significant, the Agency 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 the Agency at cost and the Client shall pay the relevant invoices within 14 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 14 days of the date of the relevant invoice.

12: Delivery.

The risk in Deliverables shall pass to the Client upon the commencement of supply or transportation to the Client. Where either delivery difficulties or other circumstances necessitate the Agency electronically storing any part of the Deliverables for the Client's future use, the Agency reserves the right to levy storage charges and charges for retrieval from storage, which the Client shall pay within 14 days of the date of the relevant invoice.

13: Trade marks and domain names

If any Deliverables use any trademarks, trading styles or trade names ('Marks') owned by the Client or under its control, it is agreed that the Agency shall have the right to use or allow use of any such Marks for the purpose of fulfilling the Agency's obligations under the Contract. The Agency shall not gain any rights over such Marks by virtue of such use, but the Agency 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.



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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 the Agency 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.

14: Rejection or cancellation

Unless a rejection fee has been agreed in advance, the Client shall have no right to terminate the Contract, allege breach of Contract or seek any cancellation, reduction or repayment of the Job Cost on the basis of style or composition. 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 the Agency is able to avoid liability for within its existing contractual commitments to suppliers.

15: Property

Where Deliverables are supplied to the Client on computer disks or other electronic storage method, then the Agency 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 the Agency's express prior written permission.

16: Liability

Nothing in these terms and conditions shall exclude or restrict the Agency'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:

- 16.1 the Agency's total liability to the Client in contract law or in tort or otherwise howsoever arising in relation to this Contract is limited to the Agency's charges for the Deliverables;
- 16.2 the Agency 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
- 16.3 the Agency 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 the Agency.

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.

17: Agency's status

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

18: Sub-contracting and assignment



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The Agency 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.

19: 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.

20: Termination

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

- 20.1 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
- 20.2 if the other shall be involved in any of the situations described at clauses 8.2–8.6 above.
- Such termination shall be without prejudice to the parties' accrued rights and liabilities, for example, the Agency's entitlement to payment for work done.

21: Matters beyond the Agency's reasonable control

The Agency 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 the Agency's employees), weather of exceptional severity, unavoidable hardware or software failures, or acts of local or central government or other authorities.

22: 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.

23: 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.

24: Service of notices

Any written notice required by this Contract should be sent to the address of the intended recipient shown overleaf. Notices can be sent by hand, by post or by fax.

25: Governing law and jurisdiction



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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.



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