

the common room

Terms & Conditions of Business

Introduction

Our wish is for all our business dealings with our clients to be conducted with openness and honesty. With this in mind, these Terms and Conditions of Business ("Conditions") have been produced to set out clearly the main legal conditions and operating procedures covering the work we do for clients. Alternative or additional conditions may be needed from time to time to cover the specific requirements of particular projects and these will be discussed and agreed in writing where appropriate.

Please consult us if any procedural element of these Conditions requires clarification, and you may wish to seek independent advice about the legal aspects of these Conditions.

Conditions

These Conditions shall apply to all commissions of work carried out by Common Room Design ("Common Room Design" "we" "us" "our") except to the extent otherwise agreed by us in writing. In these Conditions, those who commission us are referred to as 'the Client'. In the event that any one or more of these Conditions proves to be unenforceable, the remaining Conditions shall nevertheless continue to have full force and effect.

Fees & Costs

It is our normal practice to submit a proposal (the "Proposal") for each project to the Client for approval before starting work. The Proposal will include an estimate of fees and costs, which will remain valid for a period of three months from the date of the Proposal.

Once approved by the Client, the sums for fees and costs referred to in the Proposal are fixed, except in the case of any project where fees are to be charged to the Client on an hourly or daily basis as incurred, together with production costs and expenses. Where circumstances arise which could not reasonably have been foreseen at the time fees and costs were agreed, and which result in increased fees or costs to us, the Client agrees that we may pass on such increased fees and costs in addition to those agreed, having notified the Client in advance.

In addition to the fees, costs for externally sourced goods and services ("Additional Costs") will be recharged to the Client. We will charge 20% in addition to the actual costs of such goods and services as a handling charge.

Additional Costs will normally be included in the estimates provided in the Proposal. In addition to the fees and Additional Costs, a charge will be made to the Client for out of pocket expenses and for travel and subsistence outside central London will be charged as incurred.

All sums referred to in any Proposal, estimate or quotation are exclusive of Value Added Tax which will be charged where applicable at the prevailing rate.

Additional Work

Additional work necessitated by changes required by the Client to an agreed brief or scope of work will result in additional charges. Where practicable, these will be agreed with the Client before additional fees and costs are incurred.

Invoicing & Payment

Invoices rendered by the Company will be presented in accordance with the billing schedule included in the Proposal and shall be payable in full by the Client in sterling on a net monthly basis. Without prejudice to any other remedy of the Company, it may, at its discretion, charge to the Client interest on overdue invoices at a rate of 2%age pts above Barclays base rate on a daily basis.

We reserve the right not to start work on any stage of a project in respect of which a Purchase Order or other valid authorisation has not been provided by the Client.

Payment of invoices is due on specific agreed dates, or otherwise within 30 days of receipt by the Client. We reserve the right not to start work on any stage of a project where payment is overdue for an earlier stage of work. All payments shall be in pounds sterling and made by means of a cheque or credit transfer direct to our bank account and the cost of transmission and/or currency conversion shall be at the expense of the Client. Where fees and costs are paid in any currency other than sterling, payments shall be calculated by taking the closing spot rate in London for buying sterling quoted by HSBC bank plc on the second working day preceding the date payment falls due.

Cancellation

In the event of cancellation of a project in progress by the Client for any reason, the Client shall pay to us all the fees for the stage of work in progress at the time of cancellation, together with any costs already incurred by us and those costs to which we are committed in connection with the project, or all such fees and costs for the project as a whole if no interim stages are agreed.

If the Client cancels the Project less than ten working days prior to the agreed start date we reserve the right to charge for our fees for the first stage of the Project and for any further stages for which we have reserved resource.

Exceptional Costs

In the event that any project requires material or services to be provided by third parties, including, without limitation, specialist photography or illustration for which the agreed cost is greater than £1,000 we require payment in full by the Client of such costs in advance of the material or service being commissioned by us. Alternatively, we may agree to the Client making payment directly to the third party supplier under certain circumstances.

Intellectual Property Rights

All documents including, without limitation, reports, proposals, working processes, presentations, original campaigns, design work, and supporting materials, estimates of fees and costs produced by us are disclosed in confidence for the sole use of the Client and may not be disclosed to any third party without our prior written consent.

Common Room Design shall retain ownership of the entire copyright, registered design rights, unregistered design rights, trade marks and all other intellectual property rights, title and interest of whatsoever nature throughout the world (the "Intellectual Property Rights") in all work produced by us in the course of any project for which we are commissioned, including, without limitation.

The Intellectual Property Rights in our work will remain our property until all stages of any project have been completed and paid for in full, at which time, such rights in the completed work may be assigned to the Client in full or in part by agreement, at our absolute discretion. Any such assignment will not include preparatory work, workshop and training materials and designs, campaign concepts and proposals not accepted or taken forward for implementation by the Client and we may at our discretion use any of these for any other purpose, including our work for other clients.

We grant to the Client an exclusive, limited, revocable licence to use the work produced by us for any project for a single use only and strictly for the purposes and in the territories defined in the Client's original written brief, or as set out in the Proposal. This licence may be revoked by us by written notice to the Client in the event that the Client does not perform any of its obligations to us (including, without limitation, its payment obligations) or uses all or part of the work for purposes and/or in territories which have not been agreed by us. Further or additional use by the Client of the work may be permitted by us at our absolute discretion, subject to our agreement to and payment by the Client of additional fees and expenses to us and licence fees to third parties, such fees to be negotiated in good faith by the parties.

the common room

Material commissioned by us from third parties including, without limitation, copywriting, photography, illustration and animation, remains the property and copyright of the party creating the work and unless otherwise agreed with the party creating the work may be used only for the purpose commissioned and in the territories agreed in advance. At the request and cost of the Client, we will endeavour to obtain additional rights in such material, if required.

Credits & Licence

We are entitled to claim exclusive authorship of all work created by us and to use any such work for the purposes of our own publicity. In the event that the Intellectual Property Rights in any of our work is assigned to the Client, upon assignment, the Client shall grant to us and our agents, without charge, an irrevocable worldwide licence to use and reproduce the work for such publicity purposes, in all media. We will not use or publish any such material that is to the best of our knowledge not already in the public domain and is notified to us by the Client as being commercially confidential. The Client shall not authorise any third party to claim credit for work created by us.

Quality

We will make every reasonable effort to ensure that the content of all work produced by us and submitted to the Client is correct. However, the Client shall be responsible for checking and approving the content of all such work, including text, photography, illustrations and artwork, and any additional fees and production costs incurred in correcting or changing designs and artwork in production or following production will be borne by the Client.

Any complaint concerning the quality or suitability of our work must be notified to us in writing within seven days of receipt by the Client and in the absence of such notice, the Client will have been deemed conclusively to have accepted such work.

Liability

There is a limit to our liability for death or personal injury caused by our negligence or by the negligence of our employees. Subject to this:

To the extent permitted by law we shall not be liable to the Client for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the project; and

Our liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with our work and the supply of our services shall be limited to a sum equal to the fee (exclusive of VAT and expenses) paid to us in respect of the project which gives rise to the liability.

Warranty

The Client warrants that material supplied to us by the Client, its agents or representatives, for use in any project will not breach the copyright, design right, trademark, patent or other intellectual property rights of any third party and the Client agrees to indemnify us against all costs, claims, damages and expenses incurred by us as a result of any claim brought against us by a third party alleging a breach of such Intellectual Property Rights or other rights.

The Client acknowledges that we have made no searches, enquiries or representations in respect of the intellectual property rights of third parties. Whilst we will not knowingly infringe any such rights, we accept no liability arising from infringement and the Client hereby agrees to indemnify us and keep us indemnified against such infringement.

Liability For Material

All materials and property (including, without limitation, illustrations, photographs and artwork) delivered or handed over to the Client or to the Client's agents or representatives is the responsibility of the Client and, if lost, damaged or destroyed, may only be replaced by incurring additional fees and costs. The Client shall bear the full replacement costs of any such materials and property belonging to us or to any third party, which is lost, damaged or destroyed while in the possession of the Client or its agents or representatives. All materials and property belonging to the Client but held by us will be held at the risk of the Client. The Client is therefore advised to make arrangements for insurance of all such materials and property.

Force Majeure

We shall not have any liability for any delay or for the consequences of any delay in performing any of our obligations to the Client if such delay results from force majeure, or otherwise is due to a cause beyond our reasonable control.

Confidentiality

Any information (save information already in the public domain) acquired by either us or the Client or any member of their staff or their representatives regarding any aspect of the business of the other shall be treated as confidential and shall not be communicated or divulged to any third party except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority without the prior written authority of the other, except as may be reasonably necessary for carrying out the parties' obligations to each other under these Conditions.

Publicity

The Company shall be entitled to make reference to the Client and the Project in its corporate presentation materials upon completion of the Project and given the Client's consent which shall not be unreasonably withheld.

Restrictions

The Client shall not at any time during or for a period of 6 months after completion by us of any project on its own behalf or on behalf of any third party, either directly or indirectly solicit or procure the employment or engagement of any person who is either employed or engaged by us on work for the Client. As liquidated damages for any breach of such restriction the Client will pay to us a sum equal to the total remuneration or fees paid to such person in the period of 6 months prior to the breach.

Precedence

In the absence of written confirmation from us to the contrary, these Terms & Conditions will take precedence over any other conditions.

Law

These Conditions and our relationship with the Client shall be governed by and construed in accordance with English law. We and the Client irrevocably agree to submit to the courts of England over any claim or matter arising under or in connection with these Conditions.