

STANDARD TERMS AND CONDITIONS OF SALE OF GOODS AND SUPPLY OF SERVICES.



THIS AND THAT 95 LIMITED T/A THE THEME GROUP

1. INTERPRETATION

1.1 In these Conditions:
"Contract" means the contract between the Supplier and the Client formed by acceptance by the Supplier of the Client's order pursuant to these terms and conditions;
"Client" means the person, firm or company that purchases Services from the Supplier;
"Supplier" means This and That 95 Limited T/A The Theme Group whose registered office is at 16 Ridge Road, London, N21 3EA, England, Company Registration Number 03092394;
"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, logos, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.
"Payment Milestones" means any deliverable-linked review of the Services on a date by which a part of the Services are due to be completed in conjunction with scheduled payment instalments;
"Services" means the Website design and/or graphic design services which the Client requires the Supplier to undertake;
"Website" means pages or a related group of pages linked together using the hypertext transfer protocol (http);

1.2 Any reference in this Contract to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in this Contract are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SUPPLY OF SERVICES

2.1 The Supplier is experienced in execution of the Services and has the skill, expertise and knowledge to advise and to fulfil the Client's particular design requirements.

2.2 The Client wishes to rely wholly and exclusively on the Supplier's skill, expertise and knowledge to fulfil the Client's particular design requirements as specified by the Supplier to its satisfaction and approved by the Client.

3. FORMATION OF THE CONTRACT

The Client's purchase order or a written or emailed order constitutes an offer by the Client to purchase the Services specified in it on these conditions; accordingly the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to a purchase order or written or emailed request shall establish a contract for the supply and purchase of those Services on these conditions. The Client's standard terms and conditions (if any) attached to or enclosed with or referred to in any order shall not govern this Contract.

4. ACCEPTANCE OF CONDITIONS

These conditions shall apply to and be incorporated in the Contract and prevail over any inconsistent terms or conditions contained in or referred to in the Client's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing. No addition to, variation of or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

5. CLIENT'S REQUIREMENTS

Upon execution of this Contract the Client will be solely responsible for properly communicating the Client's requirements in respect of the Services to the Supplier and the Supplier discusses the same with the Client, and the designing and effecting the implementation of the same and the Client will agree suitable dates for its completion.

6. PRICE

6.1 All prices quoted are valid (subject to the provisions of clause 6.2) for 30 days from the date of the quote only or until earlier acceptance by the Client after which time they may be altered by the Supplier without giving notice to the Client.

6.2 The Supplier reserves the right by giving notice to the Client at any time before completion of the Services (or completion of an element of the Services required under the relevant Payment Milestone) to increase the price of the Services and the final requirements to reflect any increase in the cost to the Supplier which is due to any change in dates, quantities or specifications for the Services which are requested by the Client or any delay caused by any instructions of the Client or failure of the Client to give the Supplier adequate information or instructions, and the Supplier reserves the right to levy an additional charge for labour-related costs should urgent jobs be required outside normal working hours.

6.3 The price is exclusive of any applicable value added tax which the Client shall be additionally liable to pay to the Supplier.

7. PAYMENT

7.1 The Client shall pay the price of the Services on the dates and/or Payment Milestones agreed between the Supplier and Client and within 30 days following the date of the invoice.

7.2 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

- 7.2.1 withdraw Services to the Client with immediate effect;
- 7.2.2 appropriate any payment made by the Client to such of the Services as the Supplier may think fit;
- 7.2.3 charge the Client interest (both before and after any judgment) on the amount unpaid at the rate of 4% per annum above Barclays Bank PLC base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

7.3 Subject to special terms agreed in writing between the Client and Supplier, the Supplier shall be entitled to invoice the Client for the price of the Services once the parties agree that the Services have been completed OR if the production of any services goes past the expected delivery date because of delays caused by the Client, then the Supplier, reserves the right to invoice the Client for the % costs of services incurred to date OR the Supplier shall be entitled to invoice the Client for the price of the Services in accordance with any Payment Milestones agreed between the parties.

7.4 If any monies are outstanding and overdue for payment to the Supplier, the Supplier reserves the right to terminate or suspend any other services or orders for the Client until all monies are paid in full.

8. DELIVERY

8.1 With regard to any graphics service element pursuant to the Services requiring the delivery of any tangible goods, should this be appropriate, from the Supplier to the Client is to take place through the medium of a courier service (to be agreed between the parties), FTP or email, depending on the specific nature of the Services required.

8.2 Any dates for quoted delivery of any goods (produced through the execution of the Services) are approximate only and the Supplier shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the contract unless previously agreed by the Supplier in writing. The goods may be delivered by the Supplier in advance of the quoted delivery date upon giving reasonable notice to the Client and upon acceptance of the advance date by the Client.

9. RISK AND PROPERTY

If tangible goods are to be delivered to the Client, risk in those goods shall pass to the Client once delivery of the goods from the Supplier to the Client has taken place.

10. INTELLECTUAL PROPERTY

10.1 All work produced by the Supplier remains the Intellectual Property of the Supplier and is therefore owned by the Supplier, unless the transfer of Intellectual Property is agreed in writing at the beginning of a Project or agreed during a Project phase.

10.2 Transfer of Intellectual Property ownership can be quoted for upon the request of the Client and is never included in a quote as a matter of course.

10.3 The Supplier grants the Client a license to use such elements of its Intellectual Property as are notified to the Client and which are within the context of normal Client business and which are allowed and conferred to the Client as part of the commission of and production of work in respect of Services for the Client. The said licence will also extend to agencies of the Client, whether present or future, which may in the course of normal Client business and support need to utilise any or all of the work produced in respect of the Service and where the Intellectual Property Rights are owned by the Supplier.

10.4 All Intellectual Property Rights in the content and design of websites and any material emailed to the Client or otherwise supplied to the Client in conjunction with online projects are the property of the Supplier. The Client and its agents or other authorised users under the terms of any licence may not use or reproduce any of the Supplier's Intellectual Property including but not limited to any trademarks or logos registered or unregistered for any reason without written permission from the Supplier. Any breach of this clause by the Client or any other authorised user under the terms of the licence or where there is a default in payment, will entitle the Supplier to terminate the licence immediately and the Client's rights to use the work produced in accordance with the Services will cease.

10.5 Any materials supplied by the Client for incorporation on the Website or any other materials added by the Client to the contents of the Website and the Intellectual Property Rights therein shall remain the property of the Client. The Client warrants that it has obtained for itself and for the Supplier all necessary consents, approvals and licences for use of the same in the execution of the Services and that it will indemnify the Supplier for any damage that it suffers as a result of a breach of this clause of any nature whatsoever.

10.6 The software and code, which operates websites, designed and developed by the Supplier (or its third party licensors), is proprietary software and code and the Client may not use it except as expressly allowed under the terms of this Contract. The Client may not copy, reverse engineer, modify or otherwise deal with the software & code without Intellectual Property Rights being expressly granted in writing by the Supplier.

11. LIMITATION OF LIABILITY AND INDEMNITIES

11.1 The following provisions set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- 11.1.1 any breach of the Contract howsoever arising;
- 11.1.2 any use made by the Client of the Services or any part of them; and
- 11.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these conditions excludes the liability of the Supplier:

- 11.3.1 for death or personal injury caused by the Supplier's negligence; or
- 11.3.2 for fraud or fraudulent misrepresentation.

11.4 Subject to 11.1 and 11.2 the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

- 11.4.1 loss of profits; loss of business; depletion of goodwill or similar losses; loss of use; or
- 11.4.2 loss or corruption of data or information or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

11.5 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11.6 The Client agrees to indemnify and hold harmless and defend at its own expense the Supplier from and against any and all claims of infringements of copyrights, trade marks or other intellectual property rights affecting the results of this Contract and to indemnify the Supplier in respect of all other matters for which indemnification is agreed in this Contract.

11.7 The Supplier undertakes that the Client will be given notice of any claim described in 11.1 above that is made against the Supplier and the Client will have the right to defend any such claims and make settlements thereof at its own discretion and at its own expense in order to settle or oppose any such claims.

12. CONFIDENTIAL INFORMATION AND SECURITY

12.1 All information, drawings, specifications, documents, contracts, design materials and all other data which the parties may have imparted to each other and may from time to time impart to each other relating to their business, clients, prices, services, requirements, the Website, contracts (including this Contract), Website content, including any technical specifications, is proprietary and confidential.

12.2 The Supplier hereby agrees that it will use such confidential information and all other data solely for the purposes of this Contract and that it will not, at any time during or any time after the completion, expiry or termination of this Contract use or disclose the same whether directly or indirectly, to any third party without the Client's prior written consent.

13. TERMINATION

13.1 Notwithstanding any other provisions herein contained and without prejudice to any other rights such party serving notice may have, the Supplier may forthwith terminate this Contract by written notice to the Client if any of the following events occur:

- 13.1.1 if the Client commits any breach of the terms or conditions of this Contract including the terms, conditions and provisions of any schedule attached or adopted hereto and fails to remedy such breach (unless it is a breach which entitles the Supplier to terminate this Contract immediately or insofar as such breach is not capable of remedy to furnish adequate compensation therefor) within thirty (30) days after receiving written notice requiring it to do so;
- 13.1.2 if the Client becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (being a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has an administrator or manager appointed of the whole or substantially the whole of its undertakings or if any distress or execution will be threatened or levied upon any equipment and/or software or other property of the party entitled to serve notice hereunder or if the other party is unable to pay its debts in accordance with the law relating to this Contract or there is a change in control (as defined in section 1124 of the Corporation Tax Act 2010) of the Client.

13.2 Termination of this Contract will be without prejudice to any accrued rights of either party and will not affect obligations which are expressed not to be affected by expiry or termination hereof.

14. FORCE MAJEURE

The Supplier shall not in any circumstances have any liability under the Contract in any way whatsoever if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including without limitation for destruction, damage, delay or any other matters of that nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock-outs and industrial disputes (whether involving the workforce of the Supplier or any other party), fire, explosion, earthquake, acts of God, flood, drought, or bad weather, pandemic or compliance with any law or government order rule regulation or direction, breakdown of plant or machinery, malicious damage, failure of a utility service or transport network or default of suppliers or sub-contractors.

15. NOTICES

Any notice required or permitted under the terms of this Contract or required by statute, law or regulation will (unless otherwise provided) be in writing and will be delivered in person, sent by facsimile or first class post or registered mail (properly posted and fully prepaid in an envelope properly addressed) or sent by facsimile or by e-mail to the respective parties at their registered offices or such addresses as may have been notified to the other party for that purpose.

16. WAIVER

Failure or neglect by the Client to enforce at any time any of the provisions hereof will not be construed nor will be deemed to be a waiver of the Client's rights hereunder nor in any way affect the validity of the whole or any part of this Contract nor prejudice the Client's rights to take subsequent action.

17. SEVERABILITY

In the event that any of these terms, conditions or provisions or those of any schedule or attachment hereto will be determined by any competent authority to be invalid, unlawful or unenforceable to any extent such term, condition or provision will to that extent be severed from the remaining terms, conditions and provisions which will continue to be valid to the fullest extent permitted by law and with whatever modification is necessary to give effect to the commercial intention of the parties.

18. LAW

This Contract shall be governed by the law of England and Wales and the Client agrees to submit to the exclusive jurisdiction of the Courts of England and Wales.

19. ASSIGNMENT

19.1 The Client shall not without the prior written consent of the Supplier assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20. NO PARTNERSHIP OF AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else.