

**Terms of Business**

The following terms of business (the **Agreement**) are applied to all assignments between Crackerjack Design (**CJ Design**) and you the client (the **Client**) and come into effect on the date CJ Design is given written notice to proceed.

**1. Interpretation**

- 1.1 References to the singular include the plural and vice-versa and references to either gender shall include the other gender.
- 1.2 A statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time.
- 1.3 The headings used are for convenience only and shall have no effect upon the interpretation of this Agreement.
- 1.4 "writing" includes communication effected by electronic or similar means

**2. The Service**

- 2.1 The service (the **Service**) is described in the Creative Brief and/or the Logo Direction form and/or other miscellaneous Design Direction documents, as the case may be (collectively the **Brief**) and agreed between CJ Design and the Client.
- 2.2 The fees agreed for the Service (the **Fees**) are set out in the CJ Design Estimate Document.
- 2.3 Work additional to that agreed in the Brief will be charged at CJ Design additional work rates.

**3. CJ Design Obligations**

- 3.1 CJ Design will provide with reasonable skill, care, diligence and in a proper workmanlike manner the Service as set out in the Brief.
- 3.2 CJ Design will use reasonable endeavours to complete its obligations but time will not be of the essence in the performance of those obligations.

**4. Client obligations**

- 4.1 The Client will provide CJ Design with all necessary documentation, materials, briefing, advice and consultation on a timely basis to enable CJ Design to deliver the Service.
- 4.2 The Service is provided solely for the benefit and use of the Client. The Client may not make the benefit of the Service available to any third party without the prior written approval of CJ Design.

**5. Variations to the Service**

- 5.1 Requests for changes and/or variations to the Service must be notified to CJ Design in writing. CJ Design will endeavour but cannot guarantee to accommodate the requested changes. Any additional costs incurred in doing so shall be to the Client's account.
- 5.2 CJ Design reserves the right to make changes to the Service for reasons beyond its reasonable control but will endeavour to keep such changes to a minimum.

**6. Sub-contracting**

- 6.1 CJ Design may at its sole discretion sub-contract the performance of any of its obligations under the Agreement.

**7. Fees and payment**

- 7.1 The Client agrees to pay in full to CJ Design the Fees agreed for the Service.
- 7.2 In addition the Client agrees to reimburse CJ Design for all prior agreed out-of-pocket expenses.
- 7.3 Invoices shall be paid within 7 (Seven) days of the date of invoice and settled in full without set-off or deduction.
- 7.4 CJ Design shall have the right to charge interest on any amount which is not paid promptly in accordance with 7.3

**8. Termination**

- 8.1 CJ Design reserves the right to discontinue the provision of the Service and terminate the Agreement at its sole convenience on the provision of 10 (ten) calendar days notice in writing.
- 8.2 Either Party may forthwith terminate the Agreement by giving written notice to the other Party if:
  - a. any sum owed is not paid within 30 (thirty) calendar days of the due date for payment.
  - b. either Party commits any other breach of this Agreement and fails to remedy it within 10 (ten) calendar days after being notified in writing to do so.
  - c. either Party becomes subject to an administration order or is subject to a bankruptcy order or equivalent situation.
  - d. either Party is subject to a substantial change of control or ownership

**9. Consequences of termination**

Upon the termination of the Agreement for any reason:

- 9.1 All sums invoiced and the balance of work not yet invoiced up to the point of termination shall be immediately payable
- 9.2 Each Party shall cease to use, either directly or indirectly, any Confidential Information belonging to the other Party

**10. Confidentiality**

Both Parties shall at all times during the term of this Agreement and following its termination protect the Confidential Information of the other Party as it would its own Confidential Information

**11. Ownership and Copyright of the Service**

- 11.1 Copyright and title to the material produced by CJ Design shall remain solely with CJ Design and restricted copyright (as set out in this clause 11) shall transfer to the Client only upon payment in full of the Fees and any agreed additional amounts.
- 11.2 Use of the material produced by CJ Design outside of the purpose defined or contemplated in the Brief shall require the specific written permission of CJ Design on a case by case basis.
- 11.3 The Client may not assign the restricted copyright to any third party without the prior written permission of CJ Design.
- 11.4 CJ Design shall retain the right to royalty-free use of any of the material produced by CJ Design for its own publicity and advertising purposes.
- 11.5 CJ Design retains the right to utilise the methods, skills and know-how used to create and deliver the Service to provide similar works or to create derivative works for future clients of CJ Design.

**12. Intellectual Property Rights**

The Parties agree to protect such Intellectual Property Rights that can properly be claimed to be owned by each of the Parties and to take such actions to ensure all such rights are assigned to the Party concerned.

**13. Limitation of liability**

- 13.1 Nothing in the Agreement shall exclude or limit the liability of either of the Parties for personal injury or death resulting from its negligence or that of its personnel or for an act of fraud or fraudulent misrepresentation.
- 13.2 Subject to Clause 13.1 CJ Design shall not be liable to the Client for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of or corruption of data or information, or any special, indirect, consequential or pure economic losses, costs, damages, charges or expenses, howsoever caused.
- 13.3 The maximum aggregate liability of CJ Design in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Agreement shall be limited to the combined amounts already paid by the Client to CJ Design under the Agreement.

**14. Force Majeure**

Neither party shall be liable to the other for delay or failure to perform its obligations under the Agreement resulting from war, armed conflict, civil disturbance, act of God, fire, explosion, accident, flood, industrial dispute, or other cause beyond the reasonable control of either party.

**15. Assignment**

Neither Party may assign rights or obligations under the Agreement without the prior written consent of the other Party.

**16. Waiver**

A failure or delay by CJ Design to exercise any of its rights under the Agreement shall not be a waiver of that right or of any other right.

**17. Entire Agreement and Amendment**

The Agreement is the entire agreement and shall not be altered, waived, modified, supplemented or amended except by agreement in writing between the Parties.

**18. Survival**

The representations warranties and covenants concerned with confidentiality, ownership, copyright, intellectual property and limitation of liability shall survive the term of the Agreement.

**19. Third party rights**

A person who is not a party to the Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

**20. Language**

The Agreement is made in the English language. If there is any conflict in meaning with any translation the English language version shall prevail.

**21. Notices**

All notices under the Agreement must be delivered in writing.

**22. Applicable law**

These terms of business shall be subject to English law and the courts of England shall have exclusive jurisdiction over any dispute.