

## The Design Gent Limited – Terms and Conditions

These Terms and Conditions apply to the provision of all Services by us, The Design Gent Limited, a company registered in England and Wales under number 10763084 whose registered office address is at 39 Blackham Road Hugglescote, Coalville, Leicestershire, England, LE67 2DY (the “Agency”).

### STATUS DETERMINATION STATEMENT

We believe that this engagement falls **Outside** IR35 and we are therefore **Self-Employed** for tax purposes, for the following reasons:

- We have a genuine right to provide a substitute for the services agreed which is crucial with regard to IR35 and demonstrates that it is our business and that we have been engaged to provide services through the business rather than as a specific individual.
- The business would pay directly for any substitute provided. Any substitute we instruct must be paid for by the business for this to be viewed as genuine by HMRC.
- The business can engage support staff and other associates to assist in the delivery of the services, which demonstrates a lack of a requirement for a personal service.
- We are not subject to ongoing monitoring or supervision
- We are able to decide how to provide the services and our own method of working. This demonstrates that we are an independent specialist.
- You do not have any employees who can undertake the services our business has been engaged to provide or you are relying on us for additional support during busy periods.
- We will need to pay for any training or equipment which we need for the services we are providing, which helps to demonstrate that we are operating a genuine business.
- We hold business insurances which indicates that we are in business on my own account and also demonstrates that I am taking a financial risk.
- Our business is free to engage and enter into multiple contracts with other clients and so we do not rely on one source of income.

### 1. Definitions and Interpretation:

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“**Client**” means you, the individual, firm or corporate body purchasing the Services. Where an individual is entering into this Contract on behalf of a business, the individual confirms they have the authority to do so and to contractually bind that business and the business shall be the Client in the context of this Contract;

“**Contract**” means the contract formed as detailed in clause 2, which includes the acceptance of these Terms and Conditions;

“**Proposal**” means the written Proposal provided by us to you, which unless otherwise stated, remains open for acceptance for a period of 30 days and constitutes our entire scope of works; and

“**Services**” means the branding, design, web design, printing, animation, social media management and/or any other services provided by us to you.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 “we”, “us”, “our” is a reference to the Agency and includes our employees and agents;

1.2.2 “you” and “your” is a reference to the Client and includes your employees and agents;

1.2.3 “writing” and “written” includes emails and similar transmissions;

1.2.4 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;

1.2.5 “these Terms and Conditions” is a reference to these Terms and Conditions as may be amended or supplemented at the relevant time;

1.2.6 a clause is a reference to a clause of these Terms and Conditions;

1.2.7 a “Party” or the “Parties” refer to the parties to these Terms and Conditions.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation. Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations.

1.4 No terms or conditions stipulated or referred to by you in any form whatsoever shall in any respect vary or add to these Terms and Conditions unless agreed by us in writing.

### 2. The Contract

2.1 We will provide you with a written Proposal for our Services. The acceptance of our Proposal, electronically or otherwise, or the placement of an order, creates a legally binding Contract between you and us, and includes the acceptance of these Terms and Conditions, which will apply between us.

2.2 You are responsible for the accuracy of any information you submit to us and for ensuring that our Proposal reflects your requirements. Our Proposal is based on the information provided to us at the time we prepare it. If any errors or discrepancies become evident, we reserve the right to make adjustments to it.

2.3 You agree to provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services. However, any timescales we provide are a guideline only and are not of the essence of the Contract.

### 3. Fixed Price Packages Fees

3.1 We will arrange an initial consultation with you in order to gauge your specific requirements and make a recommendation of the Services best suited to you. It is your responsibility to ensure you let us know of all your specific needs and any relevant information at this time.

3.2 Unless otherwise agreed in writing, our payment terms for our fixed price packages are stated in our Proposals

3.3 We reserve the right to charge a deposit for the works, where this is the case this

shall be detailed on our Proposal.

### 4. Retained Services

4.1 The Services shall commence on the commencement date outlined in the Proposal. Support will be on a retained basis.

4.2 If you have opted for support on a retained basis:

4.2.1 All Services provided under this Contract will be invoiced on a monthly basis in advance throughout the Term of the Contract.

4.2.2 Should the Client fail to use all the hours for which we are contracted on a retained basis, the hours will be lost.

4.2.3 Should the Client need more hours on a retained basis then all additional hours will be charged at our standard fixed rate

4.3 With effect from the commencement date the Company shall, in consideration of the Fees being paid in accordance with the terms of Payment herein, provide the Services to the Client as described within the Company’s written Proposal.

4.4 Notwithstanding clause 4.3 above, we shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, to meet the changing needs of the Client or which do not materially affect the nature or quality of the Services, and we shall notify the Client in any such event.

4.5 Our standard office hours are 9am – 5pm Monday – Friday. Any works completed outside of this time may incur additional fees.

4.6 Time records shall be maintained by us and our decision shall be final. Our time is calculated in minimum units of 30 minutes for all work done, and shall be rounded up to the nearest 30 minute interval.

5. **Branding and Design:** The following clause applies if we are providing branding and design Services only.

5.1 We will provide you with several design concepts based on the brief you have given to us. We will require your input and feedback on these concepts, as we will work on your preferred concept through to completion. Any proofs we send to you must be signed off by you in writing.

5.2 Any copy and images you provide will be uploaded or delivered by us exactly as we receive it. It is your responsibility to check for mistakes, including spelling and grammar mistakes, and we accept no responsibility for the same.

5.3 We will use our own exclusive judgement when providing the Services and deciding upon artistic and other subjective factors. We will not accept liability, and no refunds will be offered, in the unlikely event that you are dissatisfied due to a matter of personal taste.

6. **Website Design:** The following clause applies if we are providing website design Services only.

6.1 We will provide you with one design concept in accordance with the brief received from you, which must be signed off before we commence building the site.

6.2 We can provide copy and source images for the website if we have included for this in our Proposal. Otherwise, you will be required to send us all logos, copy and graphics to be included on the website, in the agreed format.

6.3 It is your responsibility to check for mistakes, including spelling and grammar mistakes, at all stages and we accept no responsibility for the same.

6.4 We design our websites using editable platforms. Once the website goes live, we will provide you with a login to access your site. This will enable you to edit the text and images on certain pages. However, we do not recommend editing the home or core pages, or updating any plugins or content management systems, unless otherwise agreed, to avoid errors being made.

7. **Graphics:** The following clause applies if we are providing graphic Services only.

7.1 We will accommodate minor editing changes before the final version is issued to you, without charge. Any other changes required will be chargeable at our fixed rate in effect at the time. We also reserve the right to charge additional costs if the original brief changes significantly at any time.

7.2 After we have provided the final design to you, any changes required to it and any additional copies required will be chargeable.

### 8. Your Responsibilities

8.1 You agree, where applicable, to:

8.1.1 provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services;

8.1.2 provide us with suitable and sufficient material and images to enable us to perform the Services;

8.1.3 ensure all content uploaded by you or your employees, or provided to us, is suitably backed up and thoroughly proofread for mistakes;

8.1.4 virus-check all data and material supplied to us and ensure it is backed up regularly;

8.1.5 ensure any staff are trained in the proper use and operation of any website provided by us;

8.1.6 keep secure from third parties any passwords we may issue to you;

8.1.7 nominate a suitably qualified individual to act as your representative to liaise with us regarding the Services. This individual needs to be a decision-maker within the company; and

8.1.8 obtain and maintain all necessary licences, permissions and consents, for any images in connection with the Services.

8.2 If you fail to meet any of the provisions of this clause 8, without limiting our other rights or remedies, we shall:

8.2.1 have the right to suspend performance of the Services until you remedy the default;

8.2.2 not be held liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and

8.2.3 be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from your default.

- 9. Fees**
- 9.1 You agree to pay the fees in accordance with these terms for payment.
- 9.2 Our fixed price services will be payable as per the terms set out in the Proposal.
- 9.3 All retained Services provided under this Contract will be payable invoiced at the end of the month for the hours contracted in that month, throughout the term of the Contract.
- 9.4 All invoices are payable in full, without set off, withholding or deduction, within 28 days from the date of invoice. All fees are exclusive of VAT, unless otherwise specified.
- 9.5 You also agree to pay for any additional services requested by you and provided by us that are not specified in the Contract. These additional Services will be charged in accordance with our current, applicable fixed rate in effect at the time of the performance or such other rate as may be agreed.
- 9.6 We also reserve the right to charge you for our reasonable travelling time and travel expenses and for any materials, goods and services supplied by us in connection with the Services.
- 9.7 The time of payment is of the essence of the Contract. If you fail to make any payment to us by the due date then, without prejudice to any other right or remedy available to us, we will have the right to suspend the Services and charge you interest on a daily basis at the rate of 8% per annum above the Bank of England base rate from time to time in force, both before and after judgment, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 10. Variation and Amendments**
- 10.1 If you wish to vary the Services to be provided, please notify us as soon as possible. We will endeavour to make any required changes and any additional costs incurred by us as a result will be invoiced to you 7 days
- 10.2 If, due to circumstances beyond our control, we have to make any change in the arrangements relating to the provision of the Services, we will notify you immediately. We will endeavour to keep such changes to a minimum and will seek to offer you arrangements as close to the original as is reasonably possible in the circumstances.
- 10.3 Any agreed variation or amendment will be carried out in accordance with these Terms and Conditions and any price increase required as a result of an agreed variation or amendment will be payable in accordance with the terms for payment above in clause 9.1.
- 11. Cancellation and Termination**
- 11.1 All fixed price package services cannot be terminated.
- 11.2 Either Party has the right to terminate the Services by giving 3 months written notice to the other, whereby there will be no continuing liability by either Party. The fees will continue to be due and payable, and we will continue to provide the Services, throughout any period of notice.
- 11.3 Either Party has the right to terminate the Services immediately if the other Party:
- 11.3.1 has committed a material breach of this Contract unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other Party has failed to remedy the breach within 14 days after a written notice to do so; or
- 11.3.2 goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- 11.4 In the event of termination for your default, all payments required under this Contract shall become due and immediately payable.
- 11.5 Any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of this Contract shall survive termination under this clause 11 on a pro-rata basis.
- 12. Confidentiality:** Each Party undertakes that throughout the duration of the Contract, the Parties may disclose certain confidential information to each other. Both Parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under this Contract. Each Party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless authorised by the other Party in writing.
- 13. Format**
- 13.1 We include for any documentation or other media to be submitted in our normal standard format only. If additional copies or specific requirements are needed, we reserve the right to apply additional charges.
- 13.2 We provide our designs in the format as may be agreed. The original source files for any designs we create remain our property at all times. If you wish to obtain these, you must notify us at the time of our Proposal and if we agree to do so, we will provide a price.
- 13.3 We will retain title to the documentation and no documentation shall be handed over until all payments as detailed above have been paid in full.
- 14. Literature and Representations:** Any marketing literature is presented in good faith as a guide to represent the services offered and does not form a part of the Contract. None of our employees or agents are authorised to make any representation concerning the Services unless confirmed by us in writing. In entering into the Contract, you acknowledge that you do not rely on and waive any claim for breach of any such representations, which are not so confirmed.
- 15. Intellectual Property**
- 15.1 Subject to a written agreement to the contrary, we retain ownership in all intellectual property which may subsist in the provision of the Services. Nothing in the Contract will vest any ownership rights in you unless otherwise agreed.
- 15.2 Provided payment is made in accordance with the terms of payment above, we will grant you a non-exclusive license to use the intellectual property the subject of the Contract, only for the purposes for which we are engaged by you. The licence will become effective only once the final design has been provided and once we have received all payments under the Contract in full.
- 15.3 You may not sub-licence the intellectual property rights without our prior written permission.
- 15.4 We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of such intellectual property rights.
- 15.5 The licence will apply only to the final design and will not extend to any draft concepts, images, designs or other material viewed by you. These cannot be used without our express permission. We reserve the right to reuse these designs at our discretion.
- 15.6 We reserve the right to use any design created by us in any advertising or promotional material, publications, print, or any other purpose required by us.
- 15.7 Any licence granted shall be automatically revoked if you breach any of these Terms and Conditions or if the Contract is cancelled or terminated in accordance with clause 11.
- 15.8 You warrant that any image, logo, document or instruction given to us will not cause us to infringe any advertising codes of conduct or any intellectual property or other legal rights, including any letter patent, registered design or trade mark, in the execution of our Services. You will indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in settlement of any claim for any such infringement, including infringement of stock photography copyright, which results from our use of any information supplied by you.
- 16. Data Protection**
- 16.1 Both parties agree to comply with all applicable data protection legislation including, but not limited to, the UK General Data Protection Regulation and Data Protection Act 2018 and any subsequent amendments thereto.
- 16.2 If you are providing us with the personal data of any other person (if for example, we are running marketing campaigns on your behalf), it is your responsibility to obtain the consent of those persons to pass their data to us, as a third party. We will only process, store and hold such data to perform our obligations under the Contract and will not use it for any other purpose.
- 17. No employment:** Nothing in the Contract will render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.
- 18. Insurance -** We include for Public Liability Insurance and Professional Indemnity Insurance. Details are available on request.
- 19. Assignment and Sub-Contracting**
- 19.1 You are not entitled to assign the benefits under the Contract.
- 19.2 We may sub-contract the performance of any of our obligations under the Contract without your prior written consent. Where we are sub-contracting the performance of any of our obligations under the Contract to any person, we shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.
- 20. Liability and Indemnity**
- 20.1 Except in respect of death or personal injury caused by our negligence, we will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Contract.
- 20.2 All warranties or conditions whether express or implied by law are expressly excluded to the full extent permitted by law.
- 20.3 In the event of a breach by us of our express obligations under these Terms and Conditions, your remedies will be limited to damages, which in any event, shall not exceed the fees and expenses paid by you for the Services.
- 20.4 We may provide professional advice and recommendations in relation to the Services but we cannot accept responsibility for any actions taken as a result of such advice or recommendations, nor can we guarantee the success or outcomes of any marketing campaign or any of the other Services provided. Further, we shall not be liable for any consequences should any professional advice not be taken. We may provide introductions or referrals to other companies, however, under no circumstances shall we be liable for the actions or lack of actions of said other companies.
- 21. Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations under the Contract where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event beyond the control of the Party in question.
- 22. Waiver:** No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 23. Severance:** The Parties agree that, in the event that one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (and the Contract, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.
- 24. Notices:** Notices will be deemed to have been duly received and properly served 24 hours after an email is sent or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.
- 25. Law and Jurisdiction**
- 25.1 These Terms and Conditions and the relationship between you and us (whether contractual or otherwise) will be governed by, and construed in accordance with, the laws of England and Wales.
- 25.2 Any dispute, controversy, proceedings or claim between you and us relating to the Contract or these Terms and Conditions (whether contractual or otherwise) will be subject to the jurisdiction of the courts of England and Wales.