



designso simple
Creatively Simple

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Terms of Business

Important

Please read this document.

Set out below are the terms of business for The Big Ideas Business Ltd, trading as DesignSoSimple and www.designsosimple.co.uk and they contain certain matters affecting rights and liabilities and you are advised to read them.

ALL BUSINESS IS CONDUCTED AND NEW & ON-GOING ORDERS ARE ACCEPTED SUBJECT TO THESE TERMS OF BUSINESS BEING ACCEPTED BY THE CLIENT.

Definition

- THE AGENCY is The Big Ideas Business Ltd, T/as DesignSoSimple www.designsosimple.co.uk
- THE CLIENT is the person(s) to whom this document is addressed and/or who accepts any offer contained herein.
- THE CONTRACT means any quotation, verbal agreement or signed contract or estimate of the Agency any order accepted by the Client and these Terms.
- CLIENT PROPERTY means the Client's original artwork samples software files or other materials supplied to the Agency.
- INTELLECTUAL PROPERTY RIGHTS means all patents trade and service marks registered and unregistered designs copyright knowhow confidential information trade or business names, applications for the foregoing and any other similar protected rights.
- PRODUCTS AND SERVICES means the products and or services supplied under the Contract.
- THIRD PARTY CREATIVE WORKS means photography, illustrations, digital code, or other contracted third party suppliers.

1. Terms

The Agency is only prepared to do work on these conditions and they shall apply in all cases. No one has authority to alter, vary or amend them verbally.

The Director of the Agency can alter, vary or add

to them in writing and such document, to be of any effect, must be signed by the Director of the

Agency. These Terms shall apply to all orders placed by the Client with the Agency and shall supersede any previously published terms and conditions of business and shall override any terms and conditions stipulated, incorporated or referred to by the Client in its order or negotiations (unless otherwise expressly agreed in writing by a Director of the Agency). Copies and updates to our Terms can be sourced from our website www.getthebigidea.co.uk

2. Proofs

2.1 Proofs of work may be submitted for Client's approval and the Agency shall incur no liability for any errors not corrected by the Client in proofs so submitted. If, due to the time-scale necessitated by the job, the Client is unable or unavailable to check proofs, then the Agency cannot be held responsible for any errors and omissions.

2.2 The Client is ultimately responsible for checking proofs for any errors or omissions in design work however produced. Visual representation or design work will be provided to the best of our ability. However accuracy in colour representation and paper stocks, texture and other physical characteristics are governed by suppliers and by the final production process. Therefore all proofs and visuals supplied to the Client are representative only and are not to be taken as the finished item. The Agency will not be responsible for the cost of rectifying, or the consequences of any errors other than those notified by the Client to the Agency in writing, prior to such authority to proceed.

3. Delivery and Payment

3.1 Delivery of work shall be accepted when tendered and thereupon or, if earlier, on notification that the work has been completed, an invoice shall be raised and payment shall become due on completion, unless otherwise specified. In certain circumstances, where the Agency so desires, payment for work due to be carried out will be on a Pro Forma Basis. This will be made clear on the relevant estimate relating to the relevant work.

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3.2 Payments should be paid by BAC's funds transfer into the Agency's bank account (or via PayPal). We accept payments in GBP sterling only and from UK based business, sole traders and individuals only. Cheques and cash may incur additional charges.

3.3 No refunds can be offered for completed and delivered solutions and services, unless faulty. No refunds can be offered once work commences on the whole project or one of its parts.

3.4 Unless otherwise specified the price quoted is for delivery of the work to the Client's address as set out in the estimate. A charge may be made to cover any extra costs involved for delivery to a different address (plus VAT if payable).

3.5 Should work be delayed by the Client at any stage of the production, the Agency shall:

i) not be responsible for meeting the quoted deadline for delivery of work and

ii) charge any additional costs involved.

3.6 Should work be suspended at the request of or delayed through any fault or default of the Client for a period of 30 days the Agency shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage to date. If it is subsequently cancelled, a cancellation fee may be charged to the Client at the discretion of the Agency.

3.7 After an initial contact with the Client, the Agency will produce an estimate or quote for the Client, which will itemise all costs to be incurred. The estimate or quote will be as accurate as possible and will be valid for 30 days. Clients approval (written or oral) will constitute an agreement between us. Once work has been commenced the Client shall be liable to pay for any work, designs, creative time, artwork and ideas produced or commissioned by the Agency as detailed on the estimate/quote. Designs requested, commissioned and begun are to be paid for in full, regardless if the client decides that part of the original order is no longer needed. THE AGENCY DOES NOT PRODUCE

DESIGN OR CONCEPT WORK SPECULATIVELY UNLESS AGREED IN WRITING PRIOR TO COMMENCEMENT.

3.8 Extensive projects and/or those requiring a significant proportion of bought out costs will be invoiced in stages and which at the discretion of the Agency may be charged in advance.

3.9 If the Client does not respond to submitted work, or notify the Agency of any changes within 10 business days of submission, the project shall be deemed to have accepted the Client and invoiced.

3.10 The Agency shall notify the Client of their credit limit from time to time. In the event that this limit is exceeded, a sum may be required to be paid on account representing the value of any additional Services required and may, at the Agency's option, suspend performance of the services until such further sums are paid.

3.11 The Client shall be liable to pay interest on the overdue amounts at an annual rate of 5% above the prevailing base rate of Lloyds TSB Bank. Such interest shall accrue on a daily basis from the date on which payment becomes overdue until the date payment is received of the full overdue amount together with any accrued interest.

3.12 The Agency shall have the right, at their option, to suspend performance of the Services until the Client have paid all outstanding amounts together with all accrued interest due.

3.13 The Client shall be liable for the Agency's incidental costs of collection and recovery of amounts due.

3.14 The Agency reserves the right to add a £10 fee to each invoice in respect of administration.

4. Agency Rates

The Agency works on the basis of an hourly rate of £20 per hour or £180 a day. It is assumed that a day is normally 8 hours. The Agency however reserve the right to charge additional fees for work which incur rush charges, for unsociable hours, working weekends or bank holidays and for all additional costs through no fault of the Agency and outside of any existing agreements

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due to client insistence. Additional developer website coding work will be quoted as required.

5. Ownership

The ownership of Client approved marketing strategies, designs, concepts, layout, scripts, films, tapes, artwork and display materials or any other paid for material delivered by the Agency to the Client only passes to the Client for the exclusive use of the named Client and only for usage as agreed when commissioned and only once the Client has paid all amounts due to the Agency in respect of that work, or other materials. Any unpaid for, or not approved work submitted to the Client is not included and the Intellectual Property Rights and shall remain the property of the Agency. The Client shall have the right to use such designs, images and artwork royalty free for the purposes for which they were commissioned once payment has been made, but any unauthorised use may result in further charges becoming payable by the Client to the Agency. Any Intellectual Property Rights offered only pass to the client on payment of invoice, but excludes any third-party suppliers claims to any part of the work. The Agency reserves the right to showcase and use any designs created, as the project creator for self-promotional marketing purposes only. All work is evaluated on a case-by-case basis. Where the Agency has commissioned photography, illustration, digital media apps/themes/coding, or any other items etc originated by Third Party is sold under license for usage as agreed and quoted for and unless otherwise confirmed in writing, the Intellectual Property Rights shall remain the property of the originator.

6. Limitations of use

The Agency shall be indemnified by the Client in respect of any claims, costs and expenses; arising out of the use or misuse of any music, copy, images, film or video (digital or print) material supplied to the Agency, or by the agency, for which the Client only has limited use under license from the originator, or may contain elements, subjects, or people that the Client knowingly or unknowingly does not have permission to use or publish. It is the Clients responsibility to ensure that all material is legal (any country where it may be viewed) and that

they have all the correct permissions to use it.

As a policy, we do build or host websites containing pornographic material, or material published that might be deemed at our discretion to be used to insight hate of any group or individuals, or publishing, recruiting, selling products or raising funds for illegal acts or organisations. Any breach of this and you will be asked to remove the offending material, or if not done then The Agency may remove it without further warning. Persistent offending may result in the termination of contract, hosting, website and email accounts. If terminated, then no refund will be given.

7. Claims

The Client must raise any query with regard to invoices with the Agency within 5 business days of receipt of the invoice, otherwise the invoice shall be deemed correct and payment will be due on the invoice date, or in accordance with any other trading terms otherwise agreed in writing. Advice of damage, delay or partial loss of goods in transit or of non delivery must be given in writing to the Agency and the carrier within 3 clear days of delivery (or, in the case of non-delivery, within 14 days of dispatch of the goods) and any claim in respect thereof must be made in writing to the Agency and the carrier within 7 days of delivery (or in the case of non-delivery, within 42 days of dispatch). All other claims must be made in writing to the Agency within 14 days of delivery.

8. Illustrations, Photography, Design and Digital Coding

Bespoke Third Party Creative Works (illustration, photography and digital code) Intellectual Property Rights remain the property of the "originator", unless otherwise agreed by the originator in writing. Any Intellectual Property Rights offered to the client only applies to the finished and approved item for production and do not apply to previously shown but rejected designs, visuals, ideas, or work supplied by the Agency or Third Party Creative Works. The Agency will state in the initial quote the amount of design, concepts and work that will be generated. If the client rejects any of these concepts/work and requests further concepts

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and additional work, or requests work outside of the agreed quoted brief, then any additional costs and time may be charged to the client at the discretion of the Agency. Once an initial design is submitted for client review a client may make two sets of minor amendments to a design. However, while the Agency always try to help the Client with further small amends (at the discretion of the Agency) for no charge, the number of client changes is not unlimited and any amends or additional designs may be charged for at the discretion of the Agency.

9. Design, Build and Implementation of Websites, Web Hosting and Digital Media and Digital Code

9.1 Copyright for the operating Content Management System (CMS) software, the add-on Apps and themes are owned by the originating developer/s (not the Agency) and supplied under license (one license per website) to the Agency for the Clients website domain built and hosted by the Agency, for usage agreed and are not transferable to another hosting solution (except where otherwise expressly agreed in writing from the Agency, or if the item/s have been bespoke originated for the Client). The License Granted is subject to the provisions of this Agreement; for the single website domain it was originally built for and the Client may not offer the CMS system, apps, or template theme/s for resale.

9.2 All images and data bought by us for you, or supplied by you remain your property at all times and downloadable for your continued use - providing that the originators usage license terms allow the additional usage required by the Client.

9.3 The Agency will always recommend websites templates and apps that are mobile/tablet responsive. However if the client wants a specific template or add-on app, which is not "mobile responsive" (which is where the a page automatically reformats the desktop browser website pages and apps to give the user a better viewing experience compatible with mobile phones), then any additional developer work to make it mobile responsive (if required by the Client) is chargeable as additional work. Mobile responsive website templates and apps

are developed to work on the most widely used mobile and tablet browsers and unless the Client asks for it to work on specific less used browser and older mobile/tablet technology, we cannot guarantee how it will render – additional work required to make this happen is chargeable.

9.4 Occasionally some functionality can be affected by changes and upgrades to; mobile technology (out of our control), software apps and Content Management System. In this case, we will always endeavor to put this right and our developers are constantly upgrading templates and apps, but sometimes it can take a little time to source the issue and fix issues and we cannot always guarantee how long this will take. Some upgrades and developer support for apps and templates maybe chargeable, except if a bug is found in the website code.

9.5 We offer 2 hours FREE on-site training (within 10 miles of Barnstaple), or FREE telephone training if outside the area, plus FREE email and telephone website training support during normal office hours for the first 30 days, after which website training support is chargeable. We may also charge at our discretion for travel and time for onsite training outside of our 10 mile radius, but will always seek client approval first. There is also free "how to" tutorials on our website at: www.getthebigidea.co.uk/index.php/contact-us/support_login/ and we will supply all our customers with a free login to this area.

9.6 Hosting charges are fixed for 12 month periods, but may be subject to change with one months notice prior to the anniversary date. If in the unlikely event at anytime that the levels of web traffic, or anticipated levels necessitate dedicated server resources then we shall make an additional charge for a dedicated server in order to ensure that the website functions properly, but will always seek client approval first.

9.7 The client should ensure that files, images and digital data uploaded should be of a reasonable size compatible with web usage and individual images should where possible be below 1mb. May ask you to optimize your images and files if we think they are too

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large, or we will offer to do this for you for an additional charge, or we may in exceptional circumstances impose a limit.

9.8 260 pages based on our Fair Usage Policy - see below:

FAIR USE POLICY: The Big Ideas Business Ltd will, at their sole discretion, provide unlimited web pages (except where otherwise quoted), in accordance with our monthly hosting charge structure. Should exceptional circumstances arise from the number of pages required and/or exceptional levels of website traffic mean that additional resources and/or dedicated servers etc may be required to make the website function properly, further charges may apply, or a limit may be imposed.

9.9 Website Rental is an on-going payment for the life of the website with us and subject to a minimum 4 month rental period.

10. Liability

The Agency shall not be liable for any loss to the Client arising from unavoidable delays in the production or delays in transit not caused by the Agency. Standing material design, artwork and display materials owned by the Agency and used by it in the production shall remain its exclusive property. Such items when supplied by the Client shall remain the Client's property. If the Client supplies any artwork, illustration, images, mailing lists or defines any part of a project undertaken with the Agency, the Agency relies upon the Client to ensure and the Client warrants that the use of such material is legal, and does not infringe any copyright, spamming regulations or unauthorized use of data/lists, trademark or other intellectual property rights. The Client will indemnify the Agency in respect of the consequences of any such infringement.

11. Client's Property

11.1 Client's property and all property supplied to the Agency by or on behalf of the Client shall, while it is in the possession of the Agency or in transit to or from the Client, be deemed at the Client's risk unless otherwise agreed in writing and the Client should insure accordingly.

11.2 The Agency shall be entitled to make a reasonable charge for the storage or any Client's

property left with the Agency before receipt of the order or after notification to the Client of completion of the work.

12. Printed Matter

Estimates for printing are subject to the terms and conditions of contract of printers and their suppliers in addition to the Agency's conditions of contract and are often conditional upon margins of up to 10 per cent allowed for overs and shortages which may be charged or deducted from the invoice.

13. Media Buying

Where media is booked by the Agency on behalf of the Client the terms and conditions of the media supplier and, where appropriate, media broker shall apply. The Agency cannot be held responsible for deviations from specified times, placements and/or positions of advertisement made by media suppliers. Charges made by media suppliers for late booking and/or cancellations will be charged on to the Client.

14. Advertising Standards

Both parties shall comply with the British Codes of Advertising and Sales Promotion, the Independent Television Commission ("ITC") Code of Advertising Standards and Practice for Television, the ITC sponsorship Code, the Radio Authority Code and other relevant codes of advertising laid down whether on a statutory or a self-regulatory basis.

15. Data Protection

Each party shall ensure that any mailing list or customer database supplied to the other party shall comply with the requirements of all legislation in force from time to time including, without limitation, the Data Protection Act 1998, (as replaced, modified, or re-enacted from time-to-time) and that each party shall comply with the relevant obligations of the Data Protection Act 1998.

15. Overtime

Estimates are based on a reasonable time schedule, and may be revised to take into consideration "Priority Scheduling" requests requiring overtime and weekends. Knowledge

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of Client deadlines is essential to provide an accurate estimate.

16. Illegal Matter

16.1 The Agency shall not be required to produce matter that in their opinion is, or may be of an illegal, or defamatory nature, or an infringement of the proprietary or other rights of any third party.

16.2 The Agency shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any defamatory matter or any infringement of copyright, spamming regulations or unauthorized use of data/lists, patent or of any other proprietary or personal rights contained in any material produced for the Client.

16.3 Images provided from a client for use in a design project or other commissioned work are assumed to be the property of the client or the client has permission to use the image(s) or logo(s) and all other supplied material. The Agency will not be responsible for any copyright or trademark infringement caused by the client.

17. Termination

Either party may terminate the business arrangement forthwith by notice in writing if the other party:

17.1 Commits a material or persistent breach(es) of any of these Terms and in the case of a breach or breaches capable of remedy, fails to remedy such breach within 30 days of receipt of written notice giving full particulars of the breach(es) and requesting that the same be remedied.

17.2 Becomes insolvent, enters into liquidation or bankruptcy, passes a resolution for its winding up, has a receiver or administrator appointed over the whole or any part of its assets, makes any composition or arrangement with its creditor or takes or suffers any similar action in consequence of its debt or

17.3 Ceases, or threatens to cease, to carry on business. Termination of the business arrangement for any reason shall not affect any rights, duties or responsibilities accrued to the

parties prior to such termination. Upon such termination, the Client shall pay all sums due in respect of services performed and expenditure incurred (or committed to) by the Agency up to and including the effective date of termination. If it is cancelled without due notice being given, a cancellation fee will be charged to the client. Survival of obligations on termination Clauses relating to copyright and other intellectual property rights, ownership and custody of material, confidential information, warranties and indemnities, non-solicitation and notices shall survive beyond termination.

18. Force Majeure

If due to war, strikes, industrial action short of a strike, import or export embargo, lockouts, accidents, fire, blockade, import or export embargo, flood, natural catastrophes or other obstacles over which the Agency has no control, the Agency fails to perform any of its obligations under this Agreement, the Agency shall not be held responsible for any loss or damage which may be incurred as a result of such failure. Should the event of force majeure continue for longer than one month, the party adversely affected shall have the option of terminating this Agreement immediately without further liability other than such liabilities as have already accrued when the Term ends.

19. Notices

19.1 Any notice, invoice or other communication which either party is required by this Agreement to serve on the other party shall be sufficiently served if sent to the other party at its address specified in the contract/order form (or such other address as is notified to the other party in writing) as follows: by hand; by registered or first class post or recorded delivery; or by facsimile transmission confirmed by registered or first class post or recorded delivery. Notices sent by registered post or recorded delivery shall be deemed to be served three (3) working days following the day of posting.

19.2 Notices sent by facsimile transmission shall be deemed to be served on the day of transmission if transmitted before 4.00 pm on a working day, but otherwise on the next following working day. In all other cases, notices are deemed to be served on the day when they

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are actually received.

20. Waiver

No whole or partial waiver of any breach of this Agreement shall be held to be a waiver of any other or any subsequent breach. The whole or partial failure of either Client or Agency to enforce at any time the provisions of this Agreement shall in no way be construed to be a waiver of such provisions nor in any way affect the validity of this Agreement or any part of it or the right of either party to enforce subsequently each and every provision.

21. Non-solicitation

The parties agree that neither of them will either on their own account or in partnership or association with any person, firm, company or organization or otherwise and whether directly or indirectly during or for a period of 3 months from the end of the Term solicit or entice away or attempt to solicit or entice away (or authorise the taking of any such action by any other person) any executive of the other party who has worked on the Advertising at any time during the last 12 months of the Term.

22. Severance

If any of these Terms and Conditions should be determined to be invalid, illegal or unenforceable for any reason by any court of competent jurisdiction then such Term or Condition shall be severed and the remaining Terms and Conditions shall survive and remain in full force and effect and continue to be binding and enforceable.

23. Changes of Terms of Use

The Agency reserves the right to amend the terms and conditions at any time and without the approval of its Users, except the changes are with due regard to the interests of the Agency, not reasonable to the Client. Not reasonable to the user is a change that affects the essential elements of the contract, especially the contractually owed main services. The Agency will inform its users timely and sufficiently about changes of the terms and conditions. Any changes to the terms and conditions will be effective immediately upon the posting of

the revised terms on the Agency's website. (Depending on the nature of the change, the Agency will inform the Client of changes by email, via the valid email address supplied to the Agency). The changes count as approved, in the case where the Client does not contradict them within 10 business days after notice of the changes. In any event, by continuing to use of the Agency's services following any changes, the Client will be deemed to have agreed to the announced changes. In case of a contradiction through the Client, the Agency reserves the right to terminate business with the Client, but not before the changes come into force.

24. Governing Law

These Terms and Conditions shall be governed by and construed in accordance with English law and you hereby submit to the exclusive jurisdiction of UK English courts.