



GARDINER RICHARDSON

Terms & Conditions of business

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Company Registered in England: 3486658 VAT Registration Number: 698552669



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Our Terms & Conditions of business

1. Interpretation

In these Conditions:

"Client Material" means any documents or other materials, and any data or other information to be provided by you under Condition 4.1;

"Confidential Information" means any and all information relating to your business, supplied by you to us, or received, created or made by us as a result of the Contract;

"Contract" means the contract for the provision of the Services, subject to these Conditions;

"Fees" means the fees for the Services as set out in the Proposal;

"Insolvency Event" means if either of us becomes insolvent, has a receiver appointed over the whole or any part of our assets, enters into any compound with creditors, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of a scheme for amalgamation or reconstruction) or if the ownership or control of either of us shall pass into the hands of any other legal person, or an event analogous occurs in respect of a party in any jurisdiction to which we are subject;

"Intellectual Property Rights" means any patent, know how, trade mark, service mark, trade name, registered design, copyright, moral right, design right, database right, semi-conductor topography right or any other industrial or commercial right including any application for registration or protection of any of the same anywhere in the world;

"Output Material" means any documents or other materials, and any data or other information created or provided by us relating to the Services;

"Proposal" means the document to which these Conditions are appended;

"Services" means the service to be provided by us for you and referred to in the Proposal;

"Third Party Suppliers" means any third party supplier required to provide services in addition to the Services in order to meet your requirements.

2. Basis of the Contract

- 2.1 We shall provide the Services to you subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions, including without limitation any of your terms and conditions of purchase. Any changes or additions to the Services or these Conditions must be agreed in writing by us.
- 2.2 We shall provide you with the Services in accordance with the Proposal and where the Proposal set outs timescales or dates, we will use all reasonable endeavours to meet the same. However, time of delivery shall not be of the essence of the Contract.

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3. Approvals and Authority

- 3.1 Insofar as they are not set out in the Proposal we will submit to you for approval copy, press releases, layouts, artwork, printing proofs, storyboards and/or scripts. Your written approval of copy and layouts will be our authority to purchase production materials and prepare proofs, and your approval of the proofs will be our authority to print or publish.
- 3.2 You may request us to change, reject, cancel or stop any and all plans, schedules or work-in-progress and we shall take all reasonable steps to comply, provided that we can do so within our contractual obligations to Third Party Suppliers, and provided that in the event of any cancellation or amendment, you will reimburse us for any charges or expenses to which we are committed and will also pay our fees without rebate covering these items.
- 3.3 You acknowledge that where we are required to submit any material to third parties for publication, we will not have editorial control and accordingly can not be responsible if the published version is different to that which you have approved.

4. Client Material

- 4.1 You shall supply us with all necessary documents or other materials, and all necessary data or other information relating to the Services, within sufficient time to enable us to provide the Services in accordance with the Contract. You shall ensure the accuracy of all Client Material.
- 4.2 The Intellectual Property Rights in any Client Material shall belong to and remain with you, provided that we shall be entitled to a licence to use and allow Third Party Suppliers to use Client Material for the purposes of performing our obligations under the Contract.
- 4.3 You shall retain duplicate copies of all Client Material and insure against its accidental loss or damage. We shall have no liability for any such loss or damage, however caused.
- 4.4 You warrant that any Client Material and its use by us for the purpose of providing the Services will not infringe the Intellectual Property Rights of any third party, and you shall indemnify us against any loss, damages, costs, expenses or other claims arising from any such infringement.

5. Output Material

- 5.1 We will assign to you all Intellectual Property Rights in all Output Material which is created by us.
- 5.2 Where any Output Material is created by Third Party Suppliers, we will either, at our option, ensure that the Intellectual Property Rights in the same are assigned to you or procure a licence for you to use such Output Material for the purposes envisaged by us in preparation of the Proposal.
- 5.3 We will be entitled but not obliged to retain all originals of any art or design work produced by us or a Third Part Supplier.
- 5.4 Where the Output Material includes any trade name or logo we recommend that you obtain a United Kingdom trade mark search in respect of such trade name or logo. We will be happy to arrange this on your behalf but will require your prior approval to proceed with this and you will be responsible for meeting any costs associated with such search. We will pass on to you the benefits of any warranty or guarantee provided by our agents conducting the search but can not otherwise guarantee the accuracy of the results of such search.

It will be your responsibility to take independent advice on the extent to which any aspect of the Output Material would infringe the Intellectual Property Rights of any third party and to take steps to protect the Intellectual Property Rights assigned or licenced to you pursuant to this Condition 5.

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6. Third Party Suppliers

- 6.1 Where a Third Party Supplier is appointed by you to provide services in addition to the Services, we may manage the arrangements with regard to the provision of such services, however, we shall have no liability for the actual provision of the services, which will be governed by the contract between you and the Third Party Supplier.
- 6.2 Where we appoint a Third Party Supplier in connection with the provision of any goods (including Output Material) or services we do not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to you the benefit of any warranty, guarantee or indemnity given by the person supplying the goods or services to us.

7. Fees

- 7.1 You shall pay to us the Fees (together with any applicable VAT) in accordance with the Proposal and any additional sums which, wherever reasonably practicable, are agreed between us in respect of the provision of the Services.
- 7.2 We shall be entitled to invoice you following the end of each month in which the Services are provided, or at other times agreed with you, and payment of the Fees (and any applicable VAT) shall be made by you within 30 days of the date of the invoice.
- 7.3 If payment is not made on the due date, we shall be entitled, without limiting any other rights it may have:
 - 7.3.1 to charge interest on the outstanding amount (both before and after any judgment) at the rate of 5 % above the base rate from time to time of Barclays Bank plc from the due date until the outstanding amount is paid in full; and
 - 7.3.2 once payment is outstanding for 30 days after the due date to suspend the provision of the Services, until such time as the outstanding amount is paid in full.

8. Credit limit

- 8.1 On commencement of a new Contract where the Client has no previous payment history with the Agency, the Agency reserves the right to agree up front a defined credit limit with the Client, which will be set for a fixed period of time, this will be typically based on the size, nature and duration of the Contract and will be agreed on an individual basis
- 8.2 If payment is not received in line with the agreed credit limit the Agency reserves the right to put project work on hold until such time as full payment has been received, at which time work will immediately start again
- 8.3 The credit limit may apply to fees only, third party supplier costs incurred by the Agency on behalf of the Client or both fees and third party supplier costs
- 8.4 After the defined and pre-agreed time period, the credit limit will be reviewed and, if deemed appropriate, removed

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9. Warranties

- 9.1 We warrant to you that the Services will be provided using reasonable care and skill and in accordance with the Proposal.
- 9.2 Subject to Condition 8.1 all conditions, warranties, terms and undertakings express or implied by law in respect of the provision of the Services are to the fullest extent permitted by law hereby excluded.

10. Liability

- 10.1 The following provisions set out our entire liability (including any liability for the acts and omissions of our employees, agents and sub-contractors) to you in respect of:
- 10.1.1 any breach of our contractual obligations arising under the Contract; and
- 10.1.2 any representation (except fraudulent) or tortious act or omission including negligence arising under or in connection with the Contract
- ("Events of Default").
- 10.2 Our liability to you for death or injury resulting from our own or that of our employees' agents' or sub-contractors' negligence shall not be limited.
- 10.3 Subject to Condition 9.2, we will not be liable to you in respect of in respect of any Event of Default:
- 10.3.1 caused by any delay in performing, or any failure to perform, any of our obligations in relation to the Services, if the delay or failure was due to any cause beyond our reasonable control;
- 10.3.2 caused by any Client Material or instructions supplied by you which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of you;
- 10.3.3 for loss of profits, goodwill or any type of special, indirect or consequential loss even if such loss was reasonably foreseeable or we had been advised of the possibility of you incurring the same.
- 10.4 Subject to the Conditions 9.2 and 9.3, our entire liability in respect of any Event of Default shall be limited to damages of the greater of an amount equal to the Fees or [£]. Where the Contract is in respect of an on-going retainer, the Fees shall, for the purposes of this Condition, mean the Fees paid by you in the twelve months immediately preceding the date of the Event of Default.

11. Confidential Information

- 11.1 We hereby undertake to maintain as confidential all Confidential Information, save that which is:
- 11.1.1 already in our possession other than as a result of a breach of this Condition; or
- 11.1.2 in the public domain other than as a result of a breach of this Condition.
- 11.2 We further undertake to you to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Condition 10.1 above by our employees agents and sub-contractors (if any).

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12. Termination

- 12.1 Either of us shall be entitled to terminate the Contract at any time by giving to the other not less than one month's written notice, or where the Proposal includes a PR proposal not less than three months' written notice.
- 12.2 Either of us shall be entitled to terminate the Contract (without limiting any other remedy) at any time by giving written notice to the other if the other :
 - 12.2.1 commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so; or
 - 12.2.2 if the other suffers an Insolvency Event.
- 12.3 Termination of the Contract for whatever reason shall not affect our accrued rights arising in any way out of the Contract as at the date of termination and, in particular but without limitation, the right to recover damages against the other.

13. General

- 13.1 The failure to exercise or delay in exercising a right or remedy provided by the Contract or by law does not constitute a waiver of other rights or remedies.
- 13.2 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.
- 13.3 The Contract shall be governed by and construed in all respects in accordance with the laws of England, and you agree to submit to the non-exclusive jurisdiction of the English courts.

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