

Terms of Business

Spirit Creative Ltd of Herne Cottage, Marsworth Road, Pitstone, Leighton Buzzard, Beds, LU7 9AP ("Spirit")

1. Definitions

1.1 In these Terms, the following words and expressions shall have the following meanings:

1.1.1 "the Price" means the sums to be paid by the Client to Spirit in consideration of the performance of the Services and agreed in writing by Spirit and the Client

1.1.2 "the Services" means the services to be provided by Spirit to the Client and agreed in writing between them

1.1.3 "URL" stands for universal resource locator

1.1.4 "Intellectual Property" means any interest or right anywhere in the world in the nature of a patent, copyright, registered design, trademark, or other category of tangible or intangible intellectual property whether or not registrable

1.1.5 "the Timetable" means the timetable agreed in writing between Spirit and the Client; and

1.1.6 "the Client" means the person, partnership or company ordering the Services.

1.2 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

1.3 The headings of the paragraphs of these Terms are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of these Terms.

2. Introduction

2.1 The Client wishes Spirit to perform the Services.

2.2 Spirit is engaged in business as a graphic and web designer and has agreed to perform the Services for the Client upon the following terms and conditions.

3. Duties of Spirit

3.1 In consideration of the payment by the Client of the Price and subject to these terms, Spirit agrees to perform the Services in accordance with the Timetable

4. Duties of Client

4.1 The Client shall deliver to Spirit in accordance with the Timetable, all drafts, concepts, text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials necessary for Spirit to perform the Services in the agreed format, obtain all licences and consents necessary for their use and shall use reasonable efforts to ensure that it is correct and update it when required to do so pursuant to these terms.

4.2 Where the Client has engaged more than one supplier in the provision of brand identity, design and development services, the Client shall deliver the brand identity or design to Spirit by the date set out in the Timetable.

4.3 If on-site working at the Client's premises is required at any time during the provision of the Services, it is understood the Client will provide a safe working environment, including but not limited to, a suitable computer, desk and chair. Broadband connectivity with speeds over 500MB will also be provided, along with adequate access rights to the Client's IT infrastructure, and full instructions for work ready at time of Spirit's arrival on site.

5. Alterations

5.1 The Client may at any time request alterations to the Services by notice in writing to Spirit. Any notice shall include sufficient information to allow Spirit to understand the nature and extent of the alterations which the Client requires and to comply with its obligations under Clause 3.1.

5.2 On receipt of the request for alteration Spirit shall advise, within 5 working days, whether it is willing to do the alteration and if so shall advise the Client by notice in writing of the effect of the alteration, if any, on the Price, the Timetable and any other terms already agreed between the parties

Any increase in the Price shall be in accordance with the standard charges of Spirit for labour. For the avoidance of doubt, the Client's requirement that Spirit carry out amendments or modifications or corrective or remedial work pursuant to Clause 7 shall not constitute an alteration within the meaning of this Clause.

6. Approval of Design

6.1 Unless otherwise agreed in writing, Spirit shall present two designs to the Client based on the initial brief in a graphical format only. The Client will then review and subsequently choose from one of these designs to allow Spirit to continue performing the Services. It is possible to make some amendments to create a further design more suitable to the Client's tastes; however it is understood a certain amount of work is quoted for and the Client will be informed when this has been reached. Extra design work is then charged at our standard rate.

6.2 Once the final design is agreed, the Client shall confirm in writing that they wish to go ahead with the agreed design.

7. Completion of Services

7.1 On completion of the Services where they involve the design and production of a website, Spirit shall provide the Client with a temporary URL where the website can be viewed and tested and the Client shall review and test the website within 5 working days. If the website has failed materially to perform in accordance with any criteria agreed in writing, the Client shall promptly advise Spirit in writing outlining the areas which require to be modified. On receipt of this notice Spirit shall investigate and make changes to the website necessary to ensure that it will perform in accordance with the agreed criteria. Following the necessary changes the Client shall test the website again, within 5 working days, on the same terms as above and if no further changes are intimated by the Client, this shall be referred to as "Successful Completion". For the avoidance of doubt, Spirit shall not undertake any changes where they require the website to operate in a manner not provided for by the agreed criteria.

7.2 Spirit shall use reasonable efforts to ensure that Successful Completion occurs on or before the date set out in the Timetable for completion to occur. If any delay in achieving Successful Completion is due to delay or error beyond the control of Spirit, or the delay or default of the Client, the relevant dates set out in the Timetable shall be deemed deferred as agreed.

7.3 Upon Successful Completion:

7.3.1 The Client shall confirm in writing that Spirit have successfully completed the Services under these Terms; and

7.3.2 Spirit shall forward the final invoice.

7.4 Risk of loss or damage of any kind to the website, the content or the documentation related to it shall pass to the Client only upon Successful Completion.

8. Price and Payment

8.1 In consideration of the performance of the Services the Client shall pay Spirit the Price according to the Terms of Payment. The Price is exclusive of VAT and shall not be subject to any adjustment or increase except as agreed in accordance with Clause 5.

8.2 Excluding the initial deposit payment, which is due before work commences, the Client shall make each payment to Spirit within 14 working days of receipt of an invoice from Spirit, all payments to be made in pounds sterling. Payment by the Client of any sum under these Terms shall be without prejudice to any claims or rights the Client may have against Spirit and shall not constitute any admission by the Client as to the performance by Spirit of his obligations under these Terms.

8.3 If any payment is not made on the due date then without prejudice to any other right Spirit may have, it may forthwith suspend work on the Services.

9. Intellectual Property Rights

9.1 Unless otherwise agreed in writing and upon final payment for the Services, Spirit acknowledges that such Intellectual Property rights as are owned by Spirit deriving from the provision of Services for the Client shall be transferred to the Client (subject to the exclusions as detailed in clause 9.2) and Spirit hereby assigns to the Client all rights in such Intellectual Property whether existing or future provided always that such ownership

and assignment shall not relate to any standard template previously developed by and deployed by Spirit in delivering the Services or any specialist technique or materials used by Spirit where such technique or materials existed prior to the commencement of the Services and were not developed exclusively for the Client in the provision of the Services unless otherwise expressly agreed in writing by Spirit and/or any other party concerned.

9.2 Client acknowledges that Images/photographs/animations provided may come from an on-line stock photo library. These images are Royalty-Free and under the terms of license with Spirit's supplier (www.istockphoto.com/license.php), they can be used by Spirit in a design which is then sold to the Client for their own commercial/promotional use, however the Client has no further rights to the images themselves and agrees not to exploit them for any further use.

Spirit cannot, directly re-sell the image (this includes as part of a website template which would then be re-used by the Client). Therefore if the Client, or end Client User requires full rights to these images or work using the images so that they may use the images within their own products, they will need to purchase the images and enter into the terms with the supplier direct.

Spirit can therefore search for suitable images in this case but it is ultimately the responsibility of the Client or end Client User to purchase the images from the supplier, and forward on to Spirit for use once received. In this way, they become the full property of the Client or end Client User under the terms with the supplier. Spirit can purchase images and use in the design, however if the Client has not directly purchased these said images from the supplier, they remain the property of Spirit at all times and may not be reproduced by the Client. In no circumstances will Client use the said images in any logo or otherwise contrary to the terms of license referred to above.

9.3 Spirit and any sub-contractors retain the right to display graphics and other web design elements as examples of their work and may use the Client's name for marketing purposes.

10. Warranties

10.1 The Client warrants and represents to Spirit that any elements of text, graphics, photos, designs, trademarks or other material supplied to Spirit for the purpose of Spirit providing the Services are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements and that Spirit's use of such material shall not infringe the intellectual property rights of any third party.

10.2 Spirit warrants and represents to the Client that all works (excluding the images/photographs/animations described at 9.2 above) created by Spirit in performing the Services will, unless otherwise stated in these Terms, be original work and will not be subject to any known intellectual property or known other rights of any third party and that the Client's use thereof in accordance with the licence referred to in clause 9.2 shall not infringe the known intellectual property rights of any third party. The Client shall promptly notify Spirit of any claims by a third party that their rights have been infringed by Spirit and shall allow Spirit to defend any such claim.

10.3 All conditions, terms, representations and warranties that are not expressly stated in these Terms, whether oral or in writing or whether imposed by statute or operation of law or otherwise, including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, save for the statutorily implied terms as to title.

11. Limitation of Liability

11.1 The entire liability of Spirit to the Client in respect of any claim whatsoever or breach of these Terms, whether or not arising out of negligence, shall be limited to the Price paid by the Client under these Terms.

11.2 In no event shall Spirit be liable to the Client for any loss of business, general loss of data or corruption of data, loss of opportunity or loss of profits or for any other indirect or consequential loss or damage whatsoever. This shall apply even where such a loss was reasonably foreseeable or Spirit had been made aware of the possibility of the Client incurring such a loss.

12. Termination

12.1 Spirit shall have the right to terminate these Terms with immediate effect by notice in writing to the Client if the Client fails to make any payment when it becomes due.

12.2 Either party may terminate these Terms forthwith by notice in writing to the other if:

12.2.1 the other party commits a material breach of these Terms and, in the case of a breach capable of being remedied, fails to remedy it within a reasonable time of being given written notice from the other party to do so; or

12.2.2 the other party commits a material breach of these Terms which cannot be remedied under any circumstances; or

12.2.3 the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect; or

12.2.4 the other party ceases to carry on its business or substantially the whole of its business; or

12.2.5 the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

12.3 Any rights to terminate these Terms shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of these Terms as at the date of termination.

13. Force Majeure

Neither party shall be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, death, illness or incapacity, war, fire, the act or omission of government, highway authorities or any telecommunications carrier, operator or administration or other competent authority, the act or omission of any Internet Service Provider, or the delay or failure in manufacture, production, or supply by third parties of equipment or services, and the party shall be entitled to a reasonable extension of its obligations after notifying the other party of the nature and extent of such events.

14. Assignment

Neither party shall be entitled to assign or otherwise transfer these Terms without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.

15. Severance

If any provision of these Terms is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms had been agreed with the invalid illegal or unenforceable provision eliminated.

16. Notices

Any notice to be given by either party to the other may be sent by either email, fax or recorded delivery to the address of the other party as appearing in these Terms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served 2 days following the date of posting.

17. Entire Agreement

These Terms contain the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in these Terms, these Terms may be varied only by a document signed by both parties.

18. Governing Law and Jurisdiction

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

Signed for and on behalf of Spirit

Signature

Name

Date

Signed for and on behalf of the Client

Signature

Name

Date