

STANDARD TERMS & CONDITIONS

OF BUSINESS

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Any Services, Concepts and other graphic design consultancy services we provide are on the basis of these Conditions, which govern your Contract with Cafécreate Limited.

1. Definitions

1.1 In the Contract, unless otherwise specified, the following definitions shall apply:

"Approval Form" means a form which may be sent by e-mail or fax by us to you from time to time in relation to the Services, required to be signed by you and which must be sent by fax only to us to confirm your approval at various stages of the provision of the Services to you;

"Charges" means the charges payable by you in accordance with invoices submitted by us from time to time to you in respect of the Services;

"Concepts" means art-work, concepts and materials that we may produce specifically for you in relation to any agreed Order for Services, which shall in any event be subject to the Contract and these Conditions;

"Conditions" means our standard terms and conditions of supply set out in this document;

"Confidential Information" all ideas, concepts, plans, documents, notes, materials and information disclosed by either party to the other, whether before or after the date of the Contract, including, without limitation, any information relating to party's employees, customers, suppliers, products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunity and business affairs, whether in written, pictorial, electronic or oral form;

"Contract" means a contract for the Services, governing the commercial relationship between you and us formed by the acceptance by us of an Order submitted by you (as may be amended by agreement between you and us from time to time) and which shall in any event be subject to these Conditions;

"Estimate" means a non-binding estimate or estimates submitted by us to you in respect of the Services;

"Expenses" Any costs or expenses incurred by us in connection with the Services, including but not limited to, delivery charges;

"Intellectual Property Rights" means all our proprietary rights in respect of the Services and the Concepts, including but not limited to, patents, know-how, registered or unregistered trademarks, design right and copyright;

"Order" means an order or instructions submitted by you to us (whether in Writing, verbally or otherwise) requesting us to provide services to you;

"Project Plan" means a plan setting out the specifications and details of the Services which we may provide to you at our option, in relation to performance of the Services;

"Services" means the graphic design consultancy services (including without limitation the development and production of Concepts) which we agree to provide to you pursuant to any Contract;

"we/us/our" means Cafécreate Limited;

"Writing" includes e-mails, facsimile transmission and comparable means of communication;

"you/your" means the client who engages our Services.

1.2 In these Conditions:

1.2.1 the clause headings are included for convenience only and do not affect the construction of these Conditions;

1.2.2 words denoting the singular include the plural and vice versa; and

1.2.3 words denoting one gender include each gender and all genders.

2. Orders

2.1 You may submit an Order for Services to us in any form (whether in Writing, verbally or otherwise). We reserve the right to accept or reject any such Order, and a Contract between you and us shall only be formed in accordance with clause 3.1 of these Conditions.

2.2 You agree that any provision of Concepts and Services by us pursuant to clause 2.1 is subject to these Conditions.

2.3 You agree that the ownership of proprietary rights in the Concepts will remain vested in us unless and until we receive payment in full of all amounts due to be paid by you to us, whether under the Contract or otherwise.

3. Basis of Supply and Purchase

3.1 Submission of an Order by you to us constitutes an offer by you to purchase the Services. We reserve the right to accept or reject any such Order, or to negotiate the terms of any Order. Our acceptance (whether in Writing, verbally or otherwise) of your Order, as may be varied and agreed between us, creates a Contract for the supply of the Services by us to you under and subject to these Conditions.

3.2 If we choose not to accept your Order, we shall not be obliged to notify you in Writing or provide any reasons for such refusal to you.

3.3 Save in accordance with clause 3.4, no variation to these Conditions will be binding unless agreed in Writing between you and us.

3.4 You agree that any changes required by you to the Services or to details or specifications in respect of the Services or, any errors or omissions on your part, may result in changes to the Contract and the Estimate and accordingly we reserve the right to make such changes.

4. Supply of Services

4.1 We will use all commercially reasonable endeavours to perform the Services in accordance with the Contract and any agreed Project Plan. We may (but shall not be obliged to) require you to submit Approval Forms to us intermittently during the Contract for approval of various specifications and details relating to the Services. We reserve the right, (without any liability on our part) not to proceed with the performance of the Services until the relevant Approval Form is received by us.

4.2 We will use all commercially reasonable endeavours to provide the Services in accordance with any agreed timescales or Project Plan. However, time for performance of the Services will not be of the essence of the Contract.

5. Charges and Payment

5.1 Subject to clause 5.2, you will pay for the Charges for the Services

and any Expenses, where applicable, in such amounts and on such payment dates as are agreed from time to time or as may be set out in a Project Plan and/or in accordance with any invoices submitted by us to you for the Services

5.2 We reserve the right by giving you 7 days notice in Writing to increase any Estimate given by us to you to reflect any increase in costs due to clause 3.4, or due to any factors after the making of this Contract which are beyond our reasonable control.

5.3 The Charges for the Services are stated exclusive of any applicable value added tax and of any Expenses that are applicable. Any applicable value added tax and Expenses are payable by you in addition to the Charges.

5.4 You will pay the Charges and Expenses promptly within 30 days of the date of a relevant invoice submitted by us, without demand, deduction or set-off.

5.5 If you fail to pay any amount due and payable to under the Contract (including any sum due under this clause) within 14 days after the same falls due, you will, on demand, pay us interest at the rate of 5% per annum above the base rate of Barclays Bank plc from time to time on such amount from the date on which the same falls due up to the date of actual payment (as well after as before any judgment).

6. Contracts with Third Party Suppliers

6.1 We may provide you with details of third party suppliers who provide goods or services which complement our services ("Third Party Suppliers"). Such details are given by us to you in good faith and will not form part of the Contract nor bind us in any way.

6.2 You agree that all contracts between you and any Third Party Supplier will be entered into directly between you and the Supplier and accordingly, we will not be liable to you for any default or breach on the part of any Third Party Supplier or in relation to any recommendation of a Third Party Supplier that we may make to you.

7. Force Majeure

7.1 We will not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Services, if the delay or failure is due to circumstances beyond our reasonable control.

7.2 If any event of force majeure continues to prevent us from performing the Contract in accordance with its terms for more than 90 days, you will be entitled to terminate the Contract by notice in Writing having immediate effect.

8. Warranties and Liability

8.1 Nothing in this Contract shall limit our liability for death or personal injury caused by our negligence or willful misconduct (or that of our employees or agents) or for fraud.

8.2 Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising in connection with the performance or contemplated performance of the Contract or otherwise under or in relation to this Contract (including but not limited to any infringement of third party intellectual property rights), will be limited to the amount actually paid by you under terms of the Contract and we will, in no circumstance, be liable to you in contract, tort or otherwise for any indirect consequential or economic loss or any loss of business, profits, anticipated savings or goodwill and claims by third parties (whether foreseeable or not and whether directly or indirectly caused) which is caused (whether wholly or in part) by any breach by us of the Contract or any delay in performance or non-performance of the Contract by us or otherwise under or in relation to this Contract.

8.3 Except in respect of any material that has been produced by us (to the extent that such materials produced do not include your trade marks and other of your materials, in which case the following indemnities apply), you will indemnify us and keep us indemnified:

8.3.1 against all liabilities, claims, damages, losses, expenses and proceedings arising from or in any way connected with any breach by you of the Contract; and

8.3.2 from any claim brought by third parties alleging that your use of the Services has infringed any intellectual property or other right of any kind, or any applicable UK or international legislation or regulation.

9. Confidentiality and Secrecy

9.1 Each of the parties undertakes to keep secret and treat as confidential all of the Confidential Information of the other party and not to use any of such Confidential Information except in accordance with these Conditions and in so far as may be required for the proper exercise of such party's rights and the performance of its obligations under these Conditions or any contract between the parties and to procure that its employees, agents, subsidiaries, licensees and sub-contractors do likewise.

9.2 The obligations under clause 9.1 shall not extend to any information or documentation which the party to whom the same is disclosed ("the recipient") can demonstrate:

9.2.1 is in the public domain or has ceased to be secret in the country where it is to be disclosed (otherwise than as a result of a disclosure by the recipient or any of its officers, employees, agents, contractors or representatives);

9.2.2 is required to be disclosed pursuant to any Order of a Court of competent jurisdiction, but only for the purpose of such disclosure and to the extent required so to be disclosed;

9.2.3 is required to be disclosed pursuant to any statute, laws, regulation or ordinance, but only for the purpose of such disclosure and to the extent required so to be disclosed;

9.2.4 is (at the time the recipient receives such information or documentation from the disclosing party) already in the possession of the recipient free from any obligation of confidentiality and has not been acquired by the recipient in breach of any obligation of confidentiality; or

9.2.5 has been disclosed to the recipient under an express written statement that it is not confidential.

10. Intellectual Property

10.1 Subject to clause 10.3, all of the Intellectual Property Rights in all materials developed by us in the course of providing, or in connection with, the Services (including but not limited to, any Concepts, any visual prints or any physical models provided by us to you), will remain vested in us and be our absolute property until all monies payable by you to us, whether under the Contract or otherwise, have been received in full by us to our satisfaction.

10.2 Save as provided in clauses 2.3 and 10.1, you will acquire any title or other proprietary right to any Intellectual Property in respect of the Services or the Concepts that we provide to you.

10.3 If we purchase any materials for you which are developed by third parties, the ownership of such materials will be subject to the negotiation of terms by us with such third parties relating to the assignment or a licence of such third party intellectual property rights ("Third Party Rights") to us. All Third Party Rights which are assigned to us or licensed to us will only be transferred by us to you in accordance with the provisions set out in clause 10.1 and subject to the terms of any assignment or licence granted to us by such third parties.

11. Termination

11.1 The Contract may be terminated at any time by either party giving to the other at least 30 days' prior written notice of termination.

11.2 We will be entitled forthwith to terminate the Contract by notice in Writing to you if you:

11.2.1 fail to make any payment due to be made by you under the terms of the Contract within 7 days after the date on which the same falls due; and/or

11.2.2 have provided information to us which in our reasonable opinion, is false or misleading.

11.3 A party shall be entitled forthwith to terminate the Contract by notice in writing to the other party if:

11.3.1 the other party commits any irremediable material breach of the Contract; or

11.3.2 the other party commits any remediable breach of the Contract and fails to remedy such breach within the period of 21 days from the service on the other party of a notice from the first party specifying the breach and requiring it to be remedied; or

11.3.3 a Court makes an administration order with respect to the other party or any composition in satisfaction of the debts of, or a scheme of arrangement of the affairs of, the other party or the other party undergoes any comparable procedure under the laws of any competent jurisdiction; or

11.3.4 the other party enters into liquidation (not being a voluntary liquidation for the purposes only of reconstruction or amalgamation) or is declared insolvent or bankrupt or makes an assignment or other arrangement for the benefit of its creditors or has a receiver of its assets (or part of the assets), appointed, or undergoes any comparable procedure under the laws of any competent jurisdiction.

11.4 Any termination of the Contract will be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of such termination by the other party, including, without limitation, the breach giving rise to termination, all monies outstanding in respect of invoices submitted by us and any Charges and Expenses payable by you up to and including the date of termination of the Contract and in respect of which we will be entitled to submit an invoice forthwith following the date of termination of the Contract.

12. General

12.1 Each Contract we enter into with you is personal to you and you will not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under any Contract.

12.2 Any notice required or permitted to be given by either party to the other under these Conditions must be in Writing and (in the case of notice sent by e-mail or facsimile, to be immediately confirmed by post to our registered office address where notice is given by you, or to such address as set out in any document which forms part of this Contract where notice is given by us, or such other address as either party may specify from time to time by notice in Writing to the other party), and will be deemed effective when received (in the case of delivery by hand) or when sent (in the case of delivery by facsimile or e-mail, subject to satisfactory evidence of sending) or two days after posting (in the case of first class prepaid post).

12.3 Each party acknowledges that, in entering into the Contract, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided in the Contract, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

12.4 Failure or delay by us in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of our rights under the Contract.

12.5 No waiver by us of any breach of the Contract by you will be considered as a waiver of any subsequent breach of the same or any other provision.

12.6 If any provision of these Conditions is held by any competent authority to be invalid or

12.7 The Contract is governed by and shall be construed in accordance with English law.

12.8 You irrevocably agree for our exclusive benefit that the English Courts shall have exclusive jurisdiction in respect of any proceedings arising out of or in connection with the Contract and you irrevocably submit to the jurisdiction of the English Courts for such purposes.

12.9 Nothing contained in clause 12.8, shall limit our right to bring proceedings arising out of or in connection with the Contract in any other jurisdiction or jurisdictions whether concurrently or not.

12.10 Nothing contained in clause 12.8, shall limit our right to bring proceedings arising out of or in connection with the Contract in any other jurisdiction or jurisdictions whether concurrently or not.