

## Terms & Conditions

### Introduction

These terms and conditions shall govern the contract between EllisJames Creative Ltd ('EJ') and its Clients.

The Client may agree modifications to these terms, but such modifications must be in writing, counter signed by a representative of EllisJames Creative Ltd and cannot be inferred from a course of behaviour.

All work is carried out by EllisJames Creative Ltd on the understanding that the Client has agreed to our terms and conditions. These terms and conditions are signposted when we provide a quote or written proposal. If that quote and / or proposal is accepted, our Terms and Conditions are deemed to have been accepted.

Copyright is retained by EllisJames Creative Ltd on all design work including words, pictures, ideas, visuals and illustrations unless specifically released in writing and after all costs have been settled. If a choice of designs is presented and one is chosen for your project, only that chosen solution is deemed to be given by us as fulfilling the contract. All other designs remain the property of EllisJames Creative Ltd unless specifically agreed in writing.

### 1. Acceptance of Work

- a) At the time of proposal, EJ will provide the Client with a written quotation or proposal by e-mail. That quotation or proposal must be formally accepted either in writing by e-mail, or through agreement via our quotation software. Alternatively, the Client may send an official purchase order in reply to the proposal or quotation which will be interpreted by EJ as a formal acceptance.
- b) For the avoidance of doubt, the EJ Ltd Terms and Conditions are what govern the job, not any conditions on the Client's purchase order.

### 2. Project Prices / Title

- a) The Project Price is provided based on an agreed Brief and all work covered by that quote will be set out before the project starts. Work that extends beyond this agreed Brief will be quoted for as an additional charge.
- b) Any estimate for a whole or part of the Contract Price shall remain valid for one month and is given in good faith and shall be treated as an estimate only and all errors and omissions shall be accepted.
- c) Payment terms will be set out clearly on invoices but are 30 days as standard.
- d) EJ reserves the right to impose an interest charge on late payments at the Bank of England Base Rate plus 5% on the outstanding amount from the date due until the date of payment
- e) EJ reserves the right to decline further work on a project if there are invoices outstanding with the Client after 31 days of invoice.
- f) EJ reserves the right to remove its work for the Client from the internet if payments are not received in accordance with EJ payment terms or to demand that work be removed from the internet if EJ or its sub-contractors are not responsible for the hosting of that website or other digital work.

- g) Removal of such materials does not relieve the customer of its obligation to pay the due amount.
- h) Title to or licence to use any property or intellectual property forming part of the Service shall pass to the Client when and only when the full Contract Price for the Service has been paid.
- i) Where the Contract is quoted in stages, then each stage shall be undertaken in accordance with these conditions and EJ shall be entitled to be paid the agreed Contract Price for each stage as it is reached.
- j) For new business, EJ may, at its discretion, invoice up to 50% of the total estimated fees and / or costs in advance and EJ reserves the right not to commence work until this has been settled.
- k) EJ reserves the right to invoice all approved third-party costs prior to commissioning and reserves the right to wait until such costs have been paid before commencing work.

### **3. Delivery**

The delivery times of the Service stated by EJ are reasonable estimates and EJ shall not be responsible for any delay that is not directly attributable to the fault of EJ. Time shall not be of the essence of the contract unless it is expressly agreed in writing.

### **4. Clients Duty to Provide Information**

The Client shall be solely responsible for providing EJ with all necessary information concerning its goods/services, the Service (including the scope of use required), the market and generally, EJ shall not be responsible for any shortcomings in such information. The Client accepts that its knowledge and experience in its industry sector and the manufacture, processing and packaging of its goods / services is vital in this regard.

### **5. Data Formats**

- a) Images which are supplied in an electronic format are to be provided in a format as prescribed by EllisJames Creative Ltd. Images must be of a quality suitable for use without any subsequent image processing and EJ will not be held responsible for any image quality which the Client later deems to be unacceptable.
- b) EJ cannot be held responsible for the quality of any image which the Client wishes to be scanned from printed materials.
- c) Additional expenses may be incurred for any necessary action, including, but not limited to photography and art direction, image searches, media conversion, digital image processing, colour correction and alteration of images.

### **6. Permissions and Copyright**

- a) By supplying text, images and other data to EJ for inclusion in the Clients website, publication or other medium, the Client declares that it holds the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the Client, or rightful copyright or trademark owner.
- b) Any artwork, images or text supplied and or designed by EJ on behalf of the Client will remain the property of EJ and/or its suppliers unless otherwise agreed in writing. A licence for use of the copyright material is granted to the customer solely for the project defined in the scope or request and not for any other purpose.



- c) The Client may request in writing from EJ, the necessary permission to use materials (for which EJ holds the copyright) in forms other than for which it was originally supplied and EJ may, at its discretion, grant this and may charge for additional usage. Such permission must be obtained in writing before any of the aforesaid work is used.
- d) Any software, code, plugin or other third-party material used in a web or digital project remains the property of the creator and any ongoing licence fees or fees for upgrades are the responsibility of the client, not EJ.
- e) By supplying images, text or other data to EJ, the Client grant EJ permission to use this material freely in the pursuit of the design.
- f) Should EJ or the Client, supply an image, text, audio clip or any other file for use in a website, multimedia presentation, print item, exhibition, advertisement or any other medium, believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitations, the Client will agree to EJ removing and/or replacing the file on the site.
- g) The Client agrees to fully indemnify and hold EJ free from harm in any and all claims resulting from the Client in not having obtained all the required copyright and/or any other necessary permissions.

## **7. Source Files**

- a) EJ will supply proofs and/or PDF files as appropriate for printing, or other graphic files as detailed in the job scope or request.
- b) Charges for design work do not cover the release of our copyright design source files including, but not restricted to InDesign, Photoshop, Illustrator, XD, AfterEffects, Blender, Powerpoint, Doc, Excel, SVG, PNG, Jpeg or other source files or raw code; if the Client requires these files for transfer to an in-house or other designer, they may be subject to a separate quotation or 'buy out' charge.

## **8. Retention of Title Clause**

- a) All goods supplied to the Customer (which includes the final design material arising from the provision of design services) under the terms of this Agreement and any intellectual property rights attaching to such services shall remain the sole and absolute property of EJ both in law and in equity until the Client shall have paid EJ in full any and all outstanding sums due to the Company.
- b) The Client acknowledges that it is in possession of all goods and services supplied under the terms of this Agreement solely as bailee for EJ until the Client shall have paid EJ all monies due to it.

## **9. GDPR Guidance (Websites)**

Your website will require a GDPR notice within the privacy notice page and potentially any contact forms collecting personal data. You will also need an SSL certificate. EJ can only give suggestions as to what content should be added to your website to follow GDPR guidelines. EJ does not have a legal expertise background, so it is the responsibility of the Client to follow the correct GDPR guidelines and seek advice from a third-party where necessary.

## **10. Cancellation of Contract**



- a) The client has the right to cancel the contract at any time but remains responsible for payment of all work undertaken up to the date of cancellation as well as for any forward bookings made on their behalf that cannot be cancelled or otherwise utilised.
- b) EJ shall be entitled to terminate the Contract if any part of the Contract Price is outstanding (and not disputed) 31 days after the due date or if the Client shall go into liquidation, receivership or equivalent or if it shall enter into an agreement with its creditors for any reason or if in the reasonable opinion of the Directors, the continued association of EJ with the Client or the particular project work upon which EJ is engaged at the time is or might be damaging to the goodwill and reputation of EJ.

#### **11. Duty of Confidentiality**

Each party will use its best endeavours to preserve the confidential information of the other and will comply with the other's reasonable requirements in this regard. The Client recognises that EJ's method of working, and pricing structures are proprietary and are not generally in the public domain.

#### **12. Client's Responsibility for Implementation**

- a) Failure to consult EJ on implementation may result in unsatisfactory implementation.
- b) In the case of electronically displayed designs, clients are reminded that they need to obtain relevant licences for the use of proprietary software.
- c) When required as part of the Service, EJ will advise on implementation based upon normal production methods and techniques and upon information provided by the Client. No warranty or representation is given concerning the performance of any packaging.
- d) The Client agrees that EJ holds no responsibility for any amendments made by a third party before or after a design is published.

#### **13. Limitation of Liability**

- a) The liability of EJ under the Contract or in tort (other than in respect of death or personal injury) shall not exceed the greater of the sum paid by the Client under the Contract or such sum as shall be received by EJ in respect of any claim under any insurance policy effected by EJ.
- b) EJ shall not be liable for any indirect or consequential loss such as damage to goodwill.
- c) EJ shall not be liable for the actions of any third parties, including sub-contractors.
- d) EJ shall not be responsible for any errors apparent in artwork, copy or proofs, that have been signed off by or on behalf of the Client.
- e) The Client accepts reasonable tolerances in relation to the Service including in respect of, inter alia, paper quality and colour.
- f) The Client agrees that EJ is not liable for any failure to carry out services for reasons beyond its control, including but not limited to acts of God, telecommunication problems, software failure, hardware failure, third party interference, Government, emergency on a major scale or any social disturbance of extreme nature such as industrial strike, riot, terrorism and war or any act or omission of any third-party services.
- g) EJ is not liable for any consequences or financial losses such as, but not limited to, loss of business, profit, revenue, contract, data, or potential savings, relating to services provided

#### **14. Liability and Warranty Disclaimer (Websites)**



- a) EJ provides their website design / development and the contents thereof on an 'as is' basis and makes no warranties regarding the site and its contents, or fitness of services offered for a particular purpose. EJ cannot guarantee the functionality or operations of their website or that it will be uninterrupted or error free, nor does it warrant that the contents are current, accurate or complete.
- b) The Client agrees that EJ is not liable for any bugs, performance issues or failure of their WordPress software as this is open-source software distributed under the GPL ("GNU General Public License") and is maintained and developed by a community of thousands of users and developers.
- c) EJ endeavours to provide a website within a given delivery timeframe to the best of its ability. However, the Client agrees that EJ is not liable for any claims, losses, costs incurred or compensation due to any failure to carry out services within a given delivery time scale.
- d) On handover of files from EJ to the Client, the Client shall assume entire responsibility in ensuring that all files are functioning correctly before use. Whilst every effort is made to ensure files are error free, EJ cannot guarantee that the display or functionality of the web design or the website will be uninterrupted or error free. If, after handover of files, errors are found in code EJ has created and the standard development platform, domain name, set-up and hosting set-up are the same as when work began, then EJ can correct these errors for the Client free of charge for a period of 3 months after project handover / completion. After the 3 month period, EJ reserves the right to quote separately for any work involved in correcting an error.
- e) There are sometimes laws and taxes affecting e-commerce. The Client agrees that it is their responsibility to comply with such laws and will hold harmless, protect, and defend EJ and its subcontractors from any claim, suit, penalty, tax or tariff arising from the Client's exercise of internet e-commerce.
- f) EJ may from time to time recommend to the Client that updates are needed to their site, including but not limited to new legislation compliance, software compatibility and web standards. EJ reserves the right to quote for any updates as separate work.
- g) The Client agrees that it shall defend, indemnify, save and hold EJ harmless from any and all demands, liabilities, costs, losses and claims arising from omission to inform or implement these updates.

#### **14. Rights of Refusal**

- a) EJ will not include in its designs any text, images or other data which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities. EJ also reserves the right to refuse to include submitted material without giving reason.
- b) In the situation where any images and/or data the EJ does include in all good faith and subsequently discovers is in contravention to these Terms and Conditions, the Client is obliged to allow EJ to remove the contravention without hindrance or penalty. EJ is to be held in no way responsible for any such data being included.

#### **15. Publicity and Examples**

When the Services are in the public domain, EJ shall have rights of reasonable publicity.

#### **16. Restriction**



The Client understands and agrees that any attempt on their part to induce employees of EJ to leave their workforce, or any effort by the Client to interfere with EJ's relationship with its other employees would be harmful and damaging to EJ. The Client therefore agrees that during the time of the project and for a period of two (2) years after completion and payment, the Client will not in any way, directly or indirectly:

- I. Induce or attempt to induce any employee of EJ to quit employment.
- II. Otherwise interfere with or disrupt EJ's relationship with its employees or sub-contractors
- III. Discuss employment opportunities or provide information about competitive employment to any of EJ's employees or solicit, entice or hire away any employee of EJ for the purpose of an employment opportunity that is in competition with EJ.

This non-solicitation obligation as described in this section will be limited to employees or contractors of EJ during the period that EJ was working with the Client.

## **17. Legal**

- a) The contract shall be subject to English law and the parties submit to the non-exclusive jurisdiction of the English courts.
- b) EllisJames Creative Ltd, Company Registration Number: 9106596, whose registered office is at 21 Barkers Mead, Yate, Bristol, BS37 7LF.
- c) Any of these provisions which may be enforceable shall be (to that extent) severable and shall not affect the meaning or enforceability of any other provision.

