

## **Fuff Design – Terms & Conditions of Business**

THIS AGREEMENT is BETWEEN:

*Fuff International Limited, Victoria Studio, North Road, Tollesbury, Essex, CM9 8RQ, ("Fuff")*

AND

*THEIR CLIENT*

### **1. Interpretations**

**1.1** Unless the context otherwise admits words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

**1.2** Reference to any statutory provisions in this Agreement shall include any statutory provisions, which amends or replaces it.

### **2. Outline of Agreement**

This Agreement details the terms and conditions agreed between the Parties for the graphic design or web development project hereinafter known as the "Project" for the Client such development to be undertaken by Fuff Design.

### **3. Detailed Project Specification**

**3.1** The Parties have agreed a detailed Project specification as defined in a quote or e-mails regarding a quote for the Project.

**3.2** Any amendments proposed to this Project specification must be made in writing and delivered to the other party. Either party is entitled to request a meeting to discuss such amendments.

**3.3** If such proposed amendments incur additional expense Fuff Design is entitled to seek further payment to cover such expense.

### **4. Fees**

**4.1** The Client will pay the agreed fees to Fuff Design on commencement and delivery of the Project, completed according to the Project specification detailed in the quote documentation and e-mails. Fuff Design will invoice the Client and the Client will pay the invoice, including Value Added Tax, (VAT) at the prevailing rate according to the terms of payment detailed on the quote and the invoice.

**4.2** Fuff Design will require payment on the completion of development milestones where the Project involves considerable development time to implement. Such development milestones and the amount of payment for the completion of each milestone to be included within the Project specification as defined in the quote, or if not specified in the quote, to be agreed in writing by the parties prior to the commencement of the Project.

**4.3** If the Client does not pay any amount properly due to Fuff Design, Fuff Design may

**4.3.1** charge the Customer interest on the overdue amount at the rate of 4% per year above the base rate of HSBC Bank Plc from time to time (which interest will accrue daily until the date of actual payment, be compounded quarterly, and be payable on demand); or

**4.3.2** claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

### **5. Expenses**

**5.1** The Client will pay the expenses incurred by Fuff Design during the Project, including travel to the offices of the Client (where appropriate); the purchase of computer consumables required for the Project, and such other reasonable expenses directly related to the Project.

**5.2** Fuff Design will inform the Client in writing in advance if significant expenses not covered by clause 5.1 have to be incurred during the Project.

### **6. Delivery**

**6.1** Fuff Design will deliver the completed Project to the Client by the deadline agreed in a format agreed previously with the Client.

**6.2** If the Client requires the completed Project to be loaded onto a fileserver using File Transfer Protocol (FTP) Fuff Design is entitled to make an additional reasonable charge for this service. The Client is responsible for ensuring that the intended fileserver or disk space on the fileserver is properly configured.

### **7. Project Release**

**7.1** On delivery of the completed Project the Client will confirm by e-mail that Fuff have completed the Project and are thus released from further responsibilities on the Project. At this point the final invoice for work completed will be issued.

**7.2** Where a project involves the launch of a new website, Fuff requires that the final invoice for work completed will be paid prior to the new website launching online.

### **8. Delivery of Content & Materials**

**8.1** The Client undertakes to deliver all the content and materials required for the Project and in the formats requested to Fuff Design before commencement of the Project.

**8.2** Where this is not possible the Client will deliver such outstanding content and materials to Fuff Design within 30 days of the start of the Project.

**8.3** The Client will notify Fuff Design in writing (as soon as possible) of any delays in delivering content and materials required for the Project and provide Fuff Design with a revised timetable for supplying such content and materials.

**8.4** Fuff Design will not be responsible for any delays, missed milestones (where specified in the Project) or additional expenses incurred due to the late delivery or non-delivery of content and materials by the Client where required by Fuff Design for the Project.

## **9. Notice**

**9.1** Any notice given by either of the parties under this Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery, first-class post, or facsimile transmission to the receiving party.

**9.2** Any such notice shall be deemed to be effectively served as follows:

**9.2.1** In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting.

**9.2.2** In the case of service by email, or facsimile transmission on the next working day.

## **10. Confidentiality**

Both parties shall keep confidential the specific terms of this Agreement and Project and not disclose them save to such employees or contractors as need to know the relevant information for the purposes of performing the Project detailed in this Agreement. The parties agree that all information marked "Confidential", or where not marked it is reasonable to judge such information as confidential, shall not be disclosed at any time during the Project or for a minimum period of 2 years after the completion of the Project, except where such disclosure is required by law or by order of a court in the jurisdiction of England. The parties further agree that all information marked as a "Trade Secret" and reasonably judged to constitute a trade secret shall not be disclosed at any time during or after the expiry of this Agreement, except where such disclosure is required by law or by order of a court in the jurisdiction of England. Confidential information and Trade Secrets shall consist of, but not necessarily be limited to: technical, commercial, financial, operational, marketing or promotional information or data.

## **11. Credits and Publicity**

**11.1** Subject to clause 10 above the Client shall be able to refer to their working relationship with Fuff Design for press and publicity purposes after receiving the written approval of Fuff Design regarding the content of any such material.

**11.2** Fuff Design reserves the right to reproduce any of its Projects for promotional purposes on its own website.

## **12. Intellectual Property Rights**

**12.1** The Client undertakes to secure all copyright and any other appropriate licences, clearance or consents where required for the content and materials to be used during the Project.

**12.2** The Client grants to Fuff Design for the term of this Agreement and Project a non-exclusive, revocable, royalty-free licence to use its name, logos, trade marks or devices ("Intellectual Property") for the purposes of creating the Project.

**12.3** Neither party shall make any claim to the other party's content, materials or services during or after the expiry of this Agreement.

**12.4** Neither party shall make any claim to the other party's trademarks or register or cause to be registered or apply for a materially similar trademark or imitation of a trademark during or after the expiry of this Agreement.

**12.5** Neither party shall register or cause to be registered any company name materially similar to that of the other party.

## **13. Warranties**

The Client confirms that to the best of their knowledge and belief that the content and materials supplied by the Client for the purposes of the Project are not blasphemous, defamatory or obscene and do not breach any applicable law or regulation.

## **14. Indemnities and Limitation of Liability**

**14.1** Neither party shall be liable to the other under this Agreement in contract, tort, or otherwise (including negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential or loss whatsoever.

**14.2** The Client agrees to indemnify Fuff Design against any claims, damages, losses, costs and expenses which Fuff Design may sustain or incur in relation to any content and materials which the Client provides, such indemnity applying in respect of any claims for any breach of applicable law or regulation or any infringement of any intellectual property rights.

**14.3** Fuff Design agrees to indemnify the Client against any claims, damages, losses, costs and expenses which the Client may sustain or incur in relation to breaches of clauses 10 and 12 of this Agreement committed by Fuff Design.

**14.4** Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

## **15. Termination**

**15.1** Either party may terminate this Agreement immediately in the event that:

**15.1.1** Either party commits a serious, grave or material breach or persistent breaches of this Agreement including non-performance, default or neglect of its duties, responsibilities and obligations under this Agreement, and

**15.1.2** Such breach remains unremedied for a period of 30 days from written notice given by the other party specifying the breach and requiring its remedy.

**15.2** Furthermore this Agreement may be terminated in the event that:

**(a)** Either party is unable to pay or has no reasonable prospects of paying their debts the amount or aggregate amount of which equals or exceeds the bankruptcy level within the meaning of the Insolvency Act 1986, or

**(b)** Being a company becomes subject to an administration order or goes into liquidation, (other than for the purpose of amalgamation or reconstruction), or

**(c)** Has a receiver appointed to administer any of its property or assets, or

**(d)** Ceases or threatens to cease to carry on business, or

**(e)** Makes any voluntary agreement or enters into a compromise for the benefit of its creditors, or

**(f)** Fails to make payment in accordance with the terms of this Agreement.

**15.3** On the termination of this Agreement any completed parts of the Project already delivered to the Client or test examples of the Project not already paid for by the Client will be returned to Fuff Design. Furthermore the Client shall not retain any copies of the returned Project, parts thereof or test examples of the Project.

**15.4** Any termination of this Agreement shall be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of (or giving rise to) such termination and to those provisions of this Agreement which are by their construction intended to survive such termination (including, without limitation, clauses 10, 12 and this clause 15).

**16. Assignment**

Neither party may assign or otherwise transfer this Agreement or any rights, duties and obligations hereunder without the prior consent in writing of the other party.

**17. Force Majeure**

Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, civil disorder or industrial dispute. If such delay or failure continues for a period of at least 30 days, the party not subject to the force majeure shall be entitled to terminate this Agreement by notice in writing to the other.

**18. Joint Venture or Partnership**

Nothing in this Agreement shall be construed as creating a partnership, joint venture or an agency relationship between the parties and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party.

**19. Non-Solicitation**

The Client undertakes during the Project development period and for a period of six months after its completion not to directly or indirectly solicit or induce any of Fuff Design's employees to leave the employment of Fuff Design whether to work on a freelance or consultancy basis or to be directly employed by the Client.

**20. General**

**20.1** Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.

**20.2** It is hereby declared that the foregoing paragraphs, sub-paragraphs and clauses of this Agreement shall be read and construed independently of each other. Should any part of this Agreement or its paragraphs, sub-paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub-paragraphs and clauses.

**20.3** No addition to or modification of any clause in this Agreement shall be binding on the parties unless made by a written instrument and signed by the signatories to this Agreement or their duly authorised representatives.

**20.4** This Agreement sets out the entire agreement and understanding of the parties and is in substitution of any previous written or oral agreements between the parties.

**21. Jurisdiction**

This Agreement shall be interpreted construed and enforced in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.