

RED CHILLI DESIGN TERMS AND CONDITIONS -

353 Halliwell Road, Bolton, BL1 8DF Tel: 01204 467866

1 Interpretation

- 1.1 In these conditions the following terms shall have the following meanings:
- 'Charges' means the Charges agreed to be paid by the Client to Red chilli design for the services in accordance with these Conditions
- 'Client' means the person named in the Contract for whom Red Chillli Design has agreed to provide the Services
- 'Contract' means the Contract for the provision of the Services
- 'Services' means the services set out (overleaf) which are to be provided by Red Chillli Design to the Client in accordance with these Conditions
- 'Writing' includes post, facsimile or electronic mail
- 1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2 Orders

- 2.1 All orders must be made in Writing or if made verbally, must be confirmed in Writing within 24 hours.
- 2.2 No order submitted by a Client shall be deemed to be accepted by Red Chillli Design unless and until confirmed in Writing by Red Chillli Design.
- 2.3 The Client shall be responsible to Red Chillli Design for ensuring the accuracy of the terms of any order (including any applicable specification for the Services).

3 Estimates

- All prices given are estimates of Red Chillli Design's Charges for the Services only and are valid for 30 days from the date of the quote.

4 Specification

- 4.1 The Client and Red Chillli Design shall endeavor to promptly agree the specification for the Services including, without limitation, the time for performance (which, unless otherwise agreed in Writing, shall not be of the essence) but Red Chillli Design shall not be obliged to perform the Services unless and until the specification for them is agreed.
- 4.2 Any changes or additions to the Services or the specification for them must be agreed in Writing by Red Chillli Design and the Client.

5 Time of Performance

- 5.1 Any dates quoted for the performance of the Services are approximate only and Red Chillli Design shall not be liable for any delay in the performance of the Services howsoever caused.
- 5.2 Time for performance of the Services shall not be of the essence of the Contract unless previously agreed by Red Chillli Design in Writing.

6 The Client's Obligations

The Client shall be responsible for:

- 6.1 supplying Red Chillli Design at its own expense with all necessary materials, data or other information within sufficient time to enable Red Chillli Design to provide the Services in accordance with these Conditions;
- 6.2 ensuring that its authorised representatives attend upon Red Chillli Design to agree the specification for the Services (and any amendments to the same) to discuss and approve preliminary work and final proofs and otherwise as necessary or desirable to facilitate the provision of the Services; and,
- 6.3 retaining at its own expense copies of all data and other information supplied to Red Chillli Design and insuring against its loss or damage.

7 Approvals and authority

- 7.1 After obtaining the Clients general approval of Red Chillli Design's preliminary work Red Chillli Design will prepare and submit final proofs to the Client for their specific approval.
- 7.2 The Clients approval of Red Chillli Design's preliminary work will be Red Chillli Design's authority to prepare and submit final proofs and the Clients approval of Red Chillli Design's final proofs (as evidenced by a proof approval form signed by or on behalf of the Client) will be Red Chillli Design's authority to proceed to completion (including printing, programming and production of materials and other work required to complete the provision of the Services).

8 Charges

- 8.1 The Client shall promptly pay without deduction or set-off Red Chillli Design's Charges including those for preliminary work and any additional sums which are agreed between Red Chillli Design and the Client for the provision of Services or which, in Red Chillli Design's sole discretion, are required as a result of the Client's instructions or lack of instructions, any defect in the materials or the inaccuracy of any data or other information supplied by the Client or any other cause attributable to the Client.
- 8.2 All sums payable under these Conditions unless otherwise stated are exclusive of value added tax and other taxes and duties for which the Client shall be additionally liable at the applicable rate from time to time.

9. Payment Terms

- 9.1 Unless otherwise agreed in Writing Red Chillli Design shall be entitled to invoice the Client for its Charges (or any proportion thereof) at any time.
- 9.2 Unless otherwise agreed in Writing the Client shall pay Red Chillli Design's invoice(s) for the Charges within 21 days of the date of the invoice. The time for payment shall be of the essence of the Contract.
- 9.3 If any payment is not made on the due date, then Red Chillli Design shall be entitled, without limiting any other rights it may have, to;
- 9.3.1 cancel the Contract or suspend any further provision of the Services to the Client; and/or
- 9.3.2 charge interest on the outstanding amount (both before and after judgment) at the rate of 4% above the base rate from time to time of the Bank of England from the due date until the outstanding amount is paid in full; and/or
- 9.3.3 sell or otherwise dispose of or grant rights in any goods, materials or works created or acquired by Red Chillli Design in the provision of the Services and charge the Client for any shortfall below the Charges due under the Contract (if any).

10 Suspension of Services

Should the provision of the Services be delayed by or suspended at the request of the Client or by reason of the Client's neglect or default for a period of 30 consecutive days the full balance of Red Chillli Design's Charges in respect of Services already supplied, materials ordered and any other additional costs agreed by the parties shall become immediately repayable.

11 Lien

Red Chillli Design shall be entitled to a general lien on all goods of the Client in the possession of Red Chillli Design (including goods which have been paid for) for its Charges and all other sums due to Red Chillli Design from the Client under this or any other contract.

12 Passing of title and risk

- 12.1 Risk of damage to or loss of any goods supplied by Red Chillli Design under the Contract shall pass to the Client at the time of delivery
- 12.2 Notwithstanding delivery and the passing of risk in any such goods, or any other provision of these Conditions, the property in those goods shall not pass to the Client until Red Chillli Design has received in cash or cleared funds payment in full of the Charges and all other amounts agreed to be paid by the Client to Red Chillli Design for which payment is then due.
- 12.3 Until such time as the property in any such goods passes to the Client, Red Chillli Design shall be entitled at any time to require the Client to deliver up those goods to Red Chillli Design and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any third party where those goods are stored and repossess them.

13 Copyright

- 13.1 The copyright for all purposes in all artwork, copy and other work and materials created by Red Chillli Design in providing the Services to the Client vests in Red Chillli Design unless arrangements are made to the contrary. Such materials may not be reproduced in part or in whole without the prior permission of Red Chillli Design in Writing.

- 13.2 The Client warrants that any materials it supplies for use by Red Chillli Design in providing the Services will not infringe the copyright or other rights of any third party, and the Client shall indemnify Red Chillli Design against any loss, damage, costs, expenses and other claims arising from any such infringement.

14 Complaints

- 14.1 Any complaints about the Services supplied by Red Chillli Design must be made in Writing to Red Chillli Design within 14 days of completion of the Services or the occurrence of the matter complained of whichever shall be the earlier.
- 14.2 Where a valid complaint is made in respect of the Services which is based on their failure to meet specifications or is otherwise accepted by Red Chillli Design, Red Chillli Design shall be entitled to remedy the defect or correct the error complained of free of charge, or at Red Chillli Design's sole discretion, refund to the Client its Charges for the Services (or a proportionate part) but Red Chillli Design shall have no further liability to the Client.

15 Liability

- 15.1 Where Red Chillli Design supplies in connection with the Services any goods supplied by a third party, Red Chillli Design does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to Red Chillli Design.
- 15.2 Red Chillli Design shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any materials, data or other information or instructions supplied by the Client which are faulty, incompatible, incomplete, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non arrival, or any other fault of the Client.
- 15.3 Red Chillli Design shall have no liability to the Client for the accidental loss or damage of any materials, data and other information supplied by the Client howsoever caused.
- 15.4 Except in respect of death or personal injury caused by Red Chillli Design's negligence, or as expressly provided in these Conditions, Red Chillli Design shall not be liable to the Client by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of Red Chillli Design, its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Client, and the entire liability of Red Chillli Design under or in connection with the Contract shall not exceed the amount of the Charges, except as expressly provided in these Conditions.
- 15.5 Red Chillli Design shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Red Chillli Design's obligations in relation to the Services, if the delay or failure was due to any cause beyond Red Chillli Design's reasonable control.

16 Termination

Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits a 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 if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.

17 Termination consequences

- 17.1 In the event of the Contract being determined whether by effluxion of time notice breach or otherwise the Client shall immediately pay to Red Chillli Design:
- 17.1.1 all sums due under these Conditions; and,
- 17.1.2 (unless the Contract has been determined for Red Chillli Design's fault) all further sums which would but for the determination of the Contract have otherwise fallen due.
- 17.2 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under these Conditions and the determination of the Contract shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under these Conditions notwithstanding that the other may have exercised one or more of the rights and remedies against it.
- 17.3 Any right or remedy to which either party is or may become entitled under these Conditions or in consequence of the other's conduct may be enforced from time to time separately or concurrently with any right or remedy given by these Conditions or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.

18 Force majeure

Both parties shall be released from their respective obligations in the event of national emergency war prohibitive governmental regulation or if any other cause beyond the reasonable control of the parties or either of them renders the performance of the Contract impossible whereupon all money due under these Conditions shall be paid immediately.

19 Sub contracting

Red Chillli Design may sub-contract all or any part of its obligations under the Contract without the Client's consent.

20 Severance

If any provision of these Conditions is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of Red Chillli Design it may be severed from these Conditions and the remainder of these Conditions (or the provision in question) shall not be affected.

21 Waiver

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of the Contract shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of the Contract.

22 Whole agreement

Each party acknowledges that these Conditions contain the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

23 Notices

Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant party shown above or by facsimile transmission or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail or by telex to the correct facsimile number or electronic mail address of the addressee (with correct answerback).

24 Joint and several

All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties.

25 Proper law and jurisdiction

- 25.1 The Contract and these Conditions shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.
- 25.2 Any proceedings arising out of or in connection with the Contract may be brought in any court of competent jurisdiction in England.

26 Rights of Third Parties

A person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that act.