

Legal Policies

Legal Policies - Client Contract Terms

We/us/our means Ndizvo Limited (company number 04395564)

You/your means the person, firm or company we provide services to.

1. INTRODUCTION

1.1. Co-operation

1.1.1. You agree to help us by making available to us all relevant information and by co-operating with us.

1.1.2. In particular you agree to give a clear brief to us and ensure that all the facts given about the particular project are accurate and in no way misleading.

1.2. Basis of our Work

1.2.1. Our services (which for the purposes of these Contract Terms includes the provision of any goods) will be supplied to you in accordance with any written estimate / pricing which we have supplied to you which is accepted by you, or any written order from you which is accepted by us, subject in either case to these Contract Terms, which in the absence of any specific contract between us and you will govern the contract to the exclusion of any other terms and conditions subject to which any estimate / pricing is accepted or purported to be accepted, or any such order is made or purported to be made, by you, and under no circumstances are any other conditions to be construed as a counter offer.

1.2.2. No variation of these Contract Terms shall be binding unless agreed in writing between your authorised representative and one of our directors.

1.2.3. Our employees or agents are not authorised to make any representations concerning our services unless confirmed by one of our directors in writing. In entering into the contract you acknowledge that you do not rely on, and waive any claim for breach of, any such representations which are not so confirmed.

1.2.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on our part.

1.2.5. Our written estimate / pricing will remain open for acceptance for a period of 30 days.

1.2.6. We shall be entitled to sub-contract all or any part of the work.

1.2.7. If there is a specific contract between us (which has been signed on our behalf by one of our directors) and you and there is any conflict between that contract and these terms the terms of the specific contract shall prevail.

1.2.8. Time shall not be of the essence in relation to any dates specified by us.

1.2.9. You acknowledge that by this clause (if not otherwise) we have drawn your attention to the Construction (Design and Management) Regulations 1994 (as re-enacted or modified from time to time) and any related Approved Code of Practice from time to time issued by the Health & Safety Commission (especially the first three sections of it) and you are aware of, and, if such Regulations apply to the project or our contract, shall comply with your duties under those Regulations. If we are to be the Principal Contractor and/or Planning Supervisor under those Regulations you will promptly confirm that appointment in writing.

2. APPROVALS, AUTHORITY AND ACCESS

2.1. After obtaining your general approval to our design concept we will submit to you for specific approval detailed copy, layouts and artwork.

2.2. Authority

Your approval of drawings, copy, layouts and artwork will be our authority to purchase production materials, prepare proofs, to engage other parties and to enter into contracts for other facilities necessary to perform the services under the contract. We shall not be liable for any errors in such drawings, copy, layout and artwork which have been approved by you or which have been submitted to you and in relation to which we have not received a response from you within 7

days of submission, except to the extent that such error could not reasonably have been identified by you at the time of approval or submission (as appropriate).

2.3. Amendments

2.3.1. You may request us to change, reject, cancel or stop any or all design briefs, plans, schedules or work-in-progress and we shall take all possible steps to comply, provided that we can do so within our contractual obligations to suppliers and other third parties.

2.3.2. In the event of any such cancellation or amendment you will reimburse us for any resulting charges or expenses incurred by us, for charges or expenses to which we are committed and for work which we have carried out for you up to that point. This is in addition to your obligations at clause 10.3.

2.4. Access

You shall ensure that we have access to your premises at whatever times we deem appropriate to enable us to perform the services.

3. CHARGES

3.1. Contract Price

You will pay us the contract price in accordance with the estimate / pricing accepted by you or the order accepted by us together with any increase in price payable in accordance with Clause 3.5 and any additional charges set out in these terms or agreed between you and us.

3.2. Where the estimate / pricing shows the contract price in stages we reserve the right to invoice you at each stage.

3.3. Incidental Expenditure

We will bear the cost of UK post and UK telephone expenses but we reserve the right to charge you for exceptional expenses of this nature (e.g. couriers, parcel delivery) and all additional travel, subsistence and accommodation expenses.

3.4. Value Added Tax.

We shall include in our invoices, where appropriate, VAT as an additional charge.

3.5. Increase in Price

3.5.1. We may increase the cost of our services at any time prior to delivery to reflect any increase in the cost to us which is due to any factor beyond our control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs), any change in delivery dates, quantities or specifications for our services which are requested by you, or any delay caused by any instructions from you or failure by you to give us adequate information or instructions.

3.5.2. Where our estimate / pricing is based upon an agreed timetable we may increase the cost of our services if we have to change it to meet your requirements.

3.6. Transport, Packaging and Insurance

Unless otherwise agreed the contract price is an ex-works price, and where we agree to deliver our work to a place other than our premises, you will be liable to pay our charges for transport, packaging and insurance.

4. TERMS OF PAYMENT

4.1. Our invoices are payable in pounds sterling within 30 days of the date of the invoice (without any deduction or set off).

4.2. If you fail to make payment of any sum on the due date then, without prejudice to any other right that is available to us, we shall be entitled to:

4.2.1. Cancel the contract or suspend any further work undertaken on your behalf and/or;

4.2.2. Charge you interest (both before and after judgment) on the amount outstanding at a rate set as per "<http://www.payontime.co.uk>" (currently 8% per annum above the prevailing Bank of England base rate – 01/01/2007, subject to change), until payment in full is made.

4.3. Time for payment shall be of the essence.

5. INTELLECTUAL PROPERTY

5.1. When we refer to 'Intellectual Property Rights' we mean patents, registered and unregistered trade marks and service marks, registered designs, utility models, design rights, copyright or any application to register any of the same and any other rights in the nature of intellectual property in the UK or elsewhere relating to the services which we undertake for you whether these rights are in existence at the time of our contract with you or created later.

5.2 Subject to any specific terms agreed between us in relation to ownership and/or use of the Intellectual Property Rights: -

5.2.1. We will retain ownership in all Intellectual Property Rights other than any Intellectual Property Rights which we do not own and which are licensed to us by third parties to enable us to provide the services. Where we use stock materials from commercial or other libraries, we shall obtain a licence for you to use those materials.

5.2.2. To the extent that we are entitled to do so (but not otherwise) we grant you a royalty-free, worldwide and non-exclusive license to use the Intellectual Property Rights (but not otherwise) for the purposes of the project for which we are engaged by you. This license does not give you the right to grant sub-licenses of the Intellectual Property Rights without our prior written consent. The grant of this licence is conditional upon you paying all monies due to us under our contract with you in respect of the services and such license shall not take effect until all such monies have been paid to us in full.

5.3 You shall indemnify and keep us fully and effectively indemnified from and against all claims, liabilities, loss, damage, costs and expenses (including legal fees) suffered or incurred by us in connection with any use by you of the Intellectual Property Rights which is not in accordance with the license granted to you in Clause 5.2.2.

5.4. If an infringement of the Intellectual Property Rights occurs, then the following provisions apply: -

5.4.1. We shall have the sole right to take action against third parties for infringement of the Intellectual Property Rights licensed to you under Clause 5.2.2 and if required by us, you shall co-operate fully with us in any such action at our cost;

5.4.2. If we fail to take any such action against third parties or to require you to do so you may serve notice on us and upon the expiry of 30 days after the service of such notice you shall be entitled to prosecute such action yourself and at your own expense provided that we have not served notice within the 30 day period of our own intention to take action;

5.4.3. You shall in no circumstances settle any claim or action against third parties without our prior written consent;

5.4.4. All damages recovered from third parties shall be our exclusive property provided that you shall be entitled to set off any expenses which you are able to claim from us under this clause 5 against damages recovered by you.

5.5. You warrant that our use of any materials or information that you supply to us does not and will not infringe the intellectual property rights of whatever nature of any third party and that you are authorised to ask us to use such rights in the performance of this contract. You agree to indemnify us against any loss, damages, costs, expenses or other claims which we may suffer or incur arising from any such infringement.

5.6. We shall return to you at your cost any materials which you have supplied to us which we no longer need in order for us to perform the services for you.

6. CONFIDENTIAL INFORMATION

6.1. During our performance of the contract, you may provide us with information that you regard as confidential. You may regard the detail of the work that we are doing for you as confidential. Subject to clause 7 we agree to keep this type of information confidential and not to disclose it without your consent. We may disclose it to any third party we commission or sub-contract as long as we do so in circumstances of confidentiality. We may also disclose your name, your relationship with us and the nature of the work we have undertaken for you in any of our own marketing.

6.2. We shall not be under any obligation of confidence about matters that are in the public domain or of which we were already aware. We shall not be in breach of our duty to you if we have to disclose information which you regard as confidential to an official body or Court.

6.3. During our performance of this contract, we shall be providing you with ideas, concepts and other information. You agree to keep these confidential and only to use them for the purpose of considering your instructions to us. In the event that we agree with you not to use certain concepts, ideas or other information then you shall return to us or (at our request) destroy all materials relating to those (with any copies in whatever form stored) and not make any further use of them whatsoever.

6.4. The provisions of this clause 6 shall survive the termination of this contract.

7. USE OF MATERIALS

7.1. We may (without your consent or payment to you) make unlimited use of all material relating to the services including but without limitation drawings, artwork, ideas, know how and intellectual property rights to promote, market and advertise our services to any third party.

8. INSURANCES

8.1. Legal Liability

8.1.1. Where insurance is available at commercially reasonable rates we will carry professional indemnity insurance up to £5,000,000 and we will insure our work until it becomes your property.

8.2. Client's Risk

8.1.1. You will carry the risk of loss or damage to your property.

8.1.2. You will be responsible for and insure against loss or damage to the full value any drawings, specifications, films and other items belonging to you during the time that they are in the possession of us or of a third party or in transit to or from our premises or those of third parties.

8.1.3. Risk of damage to or loss of the work that we have done for you will pass to you on delivery which is: -

(i) In the case where we have agreed to deliver our work to your premises, at the time of delivery or, if you wrongfully fail to take delivery, at the time when we have tendered delivery of our work; or

(ii) Where you are to collect the work from our premises, the time at which we make the work available for collection.

9. LEGAL LIABILITY AND OTHER CLAIMS

9.1. Limitation of our Liability

Except in respect of our fraudulent misrepresentation or death or personal injury caused by our negligence:

9.1.1. We shall not be liable to you by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any loss of profit, consequential loss, depletion of goodwill, loss of business or costs, expenses (and whether caused by the negligence or default of our employees, subcontractors, agents or otherwise) which arise out of or in connection with the supply to you of our services (whether by us or by any subcontractor or agent) or of their use by you, except as expressly provided by these Contract Terms;

9.1.2. No action or proceedings in relation to or arising out of our performance of our services for you or for any breach of our contract with you shall be commenced against us after the expiry of 3 years from completion of the services or earlier termination of the contract;

9.1.3. In circumstances where the project requires that, in addition to our services, services are provided by other consultants, specialists or contractors, our liability for any costs, claims, loss, expense or damage, whether direct or indirect, arising out of or in connection with our contract with you shall be limited to such proportion of any such sums as it would be just and equitable for us to pay having regard to the extent of our responsibility for the same and on the basis that, all such other consultants, specialists, and contractors should be deemed to have provided to you contractual undertakings in respect of their services no less onerous than our contract with you and shall be deemed to have paid you such proportions as would be just and equitable having regard to the extent of their responsibility for such costs, claims, loss, expense or damage; and.

9.1.4. Our liability, if any, to you for any loss or damage arising out of any action or proceedings referred to in clause 9.1.2 shall not exceed the lower of

9.1.4.1. the contract price;

9.1.4.2. the insurance cover (if any) which we are obliged to carry

pursuant to Clause 8.1; and

9.1.4.3. if applicable the limit contained in Clause 9.1.3.

9.2. Indemnity to Us

Except in respect of any loss or damage caused by our negligence you will indemnify us against any loss, costs, claims, expenses or fees we may incur relating to any work prepared for you by us and approved by you or which has been submitted to you and in relation to which we have not received a response from you within 7 days of submission.

9.3. Warranty

9.3.1. We warrant to you that our work will be carried out with reasonable care and skill. All other conditions, warranties or terms implied by statute or common law are excluded to the fullest extent permitted by law. Where you have a valid claim against us in respect of any of our work which is based on any defects in the quality or condition of our work we shall be entitled to replace our work, or the part in question, free of charge or, at our sole discretion, refund to you the price of our work (or a proportionate part of the price) but we shall have no further liability to you.

9.3.2. Any claim by you which is based on any defect in the quality or condition of our work shall (whether or not delivery is refused by you) be notified to us in writing within 10 days of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If delivery is not refused, and you do not notify us accordingly, you will not be entitled to reject the work and we shall have no liability for such defect or failure, and you will be bound to pay the price as if our work had been delivered in accordance with the contract.

9.4. Adjudication

9.4.1. Without prejudice to our or your rights to bring proceedings in the courts any dispute or difference between us arising out of our contract with you may first be referred by either of us to adjudication. The adjudicator shall be a person to be agreed between us, or if we cannot agree, on the application of either of us, a person nominated as adjudicator by the Chairman of the Technology and Construction Solicitors Association ('TeCSA').

9.4.2. Adjudication shall proceed and be conducted in accordance with the adjudication rules published by TeCSA.

9.4.3. Both you and we will be bound to comply forthwith with the decision of any Adjudicator until such time (if any) as it is superseded by a decision of the courts in relation to the matter in question.

10. TERMINATION PROVISIONS

10.1. We may, without prejudice to any of our other rights, suspend the work we are undertaking for you and/or by notice in writing to you terminate our contract with you if: -

10.1.1. An order is made or a resolution is passed for your winding-up; or

10.1.2. A receiver, administrator or administrative receiver is appointed over any of your assets or undertaking; or

10.1.3. (Being an individual) an order is made for your bankruptcy; or

10.1.4. You are unable to pay your debts within the meaning of Section 123 of the Insolvency Act 1986 (or any statutory re-enactment or modification of that Act) or you make a composition with your creditors; or

10.1.5. You suffer any analogous proceedings to those at 10.1.1 to 10.1.4 in any other jurisdiction or under any foreign law; or

10.1.6. You fail to pay any sum due on the due date; or

10.1.7. You in any other manner whatsoever materially breach any provision of the contract and fail to remedy such breach within 7 days of being notified of it by us.

10.2. You may by notice in writing to us terminate the contract if one of the sub clauses at 10.1.1 to 10.1.7 applies to us.

10.3. If you terminate the contract (other than in accordance with clause 10.2) prior to the work being completed, or if we terminate the contract in accordance with clause 10.1, you will be liable to pay to us:

10.3.1. The amount of any outstanding invoices;

10.3.2. All costs and expenses incurred by us up to the date of termination;

10.3.3. Compensation for loss of profit on work undertaken but not yet billed and work not yet undertaken; and

10.3.4. Our costs incurred in respect of sub-contractors and suppliers, including fees for work carried out and any compensation for early termination.

10.4. Force Majeure

10.4.1. For the purposes of this sub-clause 'Force Majeure' shall mean any circumstances or events beyond a party's reasonable control including but not limited to, act of god, war, act of terrorism, riot, trade embargo, strike, lock-out, trade dispute, breakdown of plant or machinery, difficulty or increased expense in finding workmen, materials or transport, accident, fire, flood, storm, any order of local or national government or international authority or any other circumstances affecting the performance of the obligations set out in the contract.

10.4.2. If either party is affected by Force Majeure it shall immediately notify the other party of the nature and extent of it.

10.4.3. Neither party shall be deemed to be in breach of the contract or otherwise liable to the other by reason of any delay in the performance or non-performance of any of its obligations under the contract to the extent that such delay or non-performance is due to Force Majeure of which it has notified the other party and the time for performance of that obligation shall be extended accordingly.

11. ADVERTISING STANDARDS

11.1. In order to satisfy the requirements of the Advertising Standards Authority, the British Code of Advertising Practice, the British Code of Sales Promotion Practice and other codes of advertising standards laid down voluntarily within the advertising industry ('the Codes') or any statutory requirements and in the interests of yourselves, ourselves and the public you agree to supply us immediately with objective factual evidence, if so required, in support of any product claims you wish us to make.

11.2. You agree to inform us without delay if you consider that any claim or trade description in any materials submitted to you by us for approval is false or misleading in relation to your product or service having regard to, amongst other things, the Codes.

11.3. We shall not be liable for any breaches of the Codes or other relevant statutes where you have approved any advertising material prepared by us or which has been submitted to you and in relation to which we have not received a response from you within 7 days of submission.

11.4. You shall indemnify and keep us fully and effectively indemnified from and against all claims, liabilities, loss, damage, costs and expenses (including legal fees) suffered or incurred by us in connection with your breach of this clause 11.

12. TITLE

12.1. Not withstanding the delivery and the passing of risk in our work, or any other provision of these Contract Terms, ownership in the materials that we provide to you shall not pass to you until we have received in cash or cleared funds payment in full of the price for our work and all other work agreed to be undertaken by us for you for which payment is then due.

12.2. Until such time as the ownership in the materials that we provide to you passes to you, you will hold our work and materials as our fiduciary agent and bailee, and will keep it separate from your own property and that of third parties, properly stored, protected and insured and identified as our property.

12.3. Until such time as ownership in the materials that we provide to you passes to you, we shall be entitled at any time to require you to deliver up our work to us and if you fail to do so, forthwith to enter upon any of your premises or that of any third party where our work is stored, and to re-possess it.

13. GENERAL

13.1. The formation, interpretation and operation of this contract shall be governed by English Law and you agree to submit to the exclusive jurisdiction of the English Courts in all matters regarding it except to the extent that we invoke the jurisdiction of the courts of any other country.

13.2. Any notice required or permitted to be given by either party to the other under these Contract Terms shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may have been notified pursuant to this clause to the party giving the notice and may be delivered personally, by first class post, by first class airmail letter, email or by fax. A notice shall be deemed to have been served if personally delivered at the time of delivery, if sent by first class post 48 hours after posting, if delivered by first class airmail letter 7 clear days after posting or if sent by fax at the time of transmission.

13.3. No waiver by us of any breach by you of any of these Contract Terms shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4. You shall not assign or transfer the benefit and/or burden of our contract with you (or any part of it) to any third party without our prior written consent.