

Parties:

1. 'The Designer': Carl Smart, T/A
2. 'The Customer': please fill in

Recitals:

1. 'The Designer' is engaged in the business of designing graphic elements, websites and other marketing materials for Customers.
2. 'The Customer' wishes to engage the Designer to provide said services.

All services provided by the Designer to the Customer are subject to the following terms and conditions.

1. Acceptance.

A copy of these terms and conditions must be signed at the time of submission of work to the Designer, indicating Agreement to and acceptance of these Terms and Conditions. Alternatively, payment of an advance fee is an acceptance of these terms and conditions, a copy of which are available via the Designer's website (www.carlsmart.co.uk)

2. Charges.

Charges for services to be provided by the Designer are defined in the project quotation that the Customer receives via e-mail. Quotations are valid for a period of 30 days. The Designer reserves the right to alter a quotation after expiry of the 30 days. All services require an advance payment of a minimum of forty (40) percent of the project quotation total before the work is supplied to the Customer for review. The remaining sixty (60) percent of the project quotation total will be due upon completion of the work prior to upload to the server or release of materials. Charges for web design work do not cover the release of source png or fla files; if the Customer requires these items then a separate quotation can be prepared.

Payment for services is due by cheque.

3. Customer Review.

The Designer will provide the Customer with an opportunity to review the appearance and content of the materials during the design and upon completion. At the completion of the project, such materials will be deemed to be accepted and approved unless the Customer notifies the Designer otherwise within ten (10) working days of the date the materials are made available to the Customer. Customer additions or variations including alteration of style and the cost of additional proofs necessitated by such alterations will be charged in addition to the agreed price on a time and materials basis unless agreed otherwise in writing. The Customer will be notified of any such costs prior to the work commencing. The Designer shall incur no liability for any errors not corrected and communicated by the Customer in proofs submitted. Where any valid claim in respect of any of the work which is based on any defect in the quality or condition of the work or its failure to comply with the Customer's instructions is notified to the Designer in accordance with these terms and conditions, the Designer shall be entitled to replace the work (or the part in question) free of charge, or at the Designer's discretion, refund to the Customer the price of the work (or a proportionate part of the price) but the Designer shall have no further liability to the Customer.

4. Turnaround Time and Content Control.

The Designer shall use all reasonable endeavours to deliver the work to the Customer by any agreed date and shall notify the Customer of any anticipated delay at the first opportunity. The Designer will not be liable for delays caused by matters outside his control. Any times or dates quoted for the supply of the work are dependant on the Customer giving reasonable instructions to the Designer. Unless otherwise stated, time shall not be of the essence in relation to the performance of services. During the project, the Designer will require the Customer to provide copy and images. If content is not provided within four (4) weeks of an official request by email then he reserves the right to advise the Customer of a revision to the final payment fee based on new or revised pricing schedules that may be introduced from time to time. If content is not provided within eight (8) weeks from the original email request then the Designer may terminate the Agreement (subject to the provisions contained in paragraph 7).

5. Payment.

Invoices will be provided by the Designer upon completion of the work. Invoices are normally sent via email; however, the Customer may elect to receive hard copy invoices. Invoices are due upon receipt. Accounts that remain unpaid thirty (30) days after the date of the invoice will be required to pay late interest on the total amount due in the amount of five percent (5%) plus the base rate. The rate that applies is the rate in force at the end of the day on which the payment was due. The rate is listed as the 'UK clearing bank base lending rate' in the Financial Times.

6. Default.

Accounts unpaid thirty (30) days after the date of invoice will be considered in default. If the Customer in default maintains any information or files on the Designer's Web space, he will, at his discretion, remove all such material from his web space. The Designer will not be responsible for any loss of data incurred due to the removal of the service. Removal of such material does not relieve the Customer of the obligation to pay any outstanding charges assessed to the Customer's account. Cheques returned for insufficient funds will be assessed a return charge of £25 and the Customer's account will immediately be considered to be in default until full payment is received.

7. Termination.

Termination of services by the Customer must be in a written notice and will be effective on receipt of such notice. The Customer will be invoiced for design work completed to the date of first notice of cancellation and the Designer reserves the right to charge a project cancellation fee of up to 50% of the remaining fees, for payment in full within thirty (30) days. Any advance payment is non-refundable.

Either party may terminate this Agreement immediately if the other shall:

Be in breach of any of the terms of this Agreement which, in the case of a breach capable of remedy, shall not have been remedied within 21 days of receipt of a written notice specifying the breach and requiring it's remedy.

Be unable to pay it's debts or enter into compulsory or voluntary liquidation or compounds with or convenes a meeting of its creditors or has a receiver or manager appointed or (being an individual or firm) becomes bankrupt or ceases for any reason to carry on business or takes or suffers any similar action. Within seven (7) days of the date of termination of this Agreement for whatever reason, the Customer will return or destroy (as the Designer will instruct) hard copy forms of the materials, the Designer's designs, graphics and all audio-visual and hard copy materials and data relating to the website and purge all magnetic media forms of the website and all software and related materials and provide the Designer with an undertaking that the original and all copies have been returned or destroyed and/or purged as the case may be and permit the Designer or his agents to collect, destroy or purge the items. Termination of this Agreement shall be without prejudice to any accrued rights of either party.

8. Copyright and intellectual property.

The Customer retains the copyright to data, files and graphic logos provided by the Customer, and grants the Designer the rights to publish and use such material. The Customer must obtain permission and rights to use any information or files that are copyrighted by a third party. The Customer is further responsible for granting the Designer permission and rights for use of the same and agrees to indemnify and hold harmless the Designer from any and all claims resulting from the Customer's negligence or inability to obtain proper copyright permissions, including but not limited to framing or linking to third party websites and/or third party proprietary material. Entering into a contract for services shall be regarded as a guarantee by the Customer to the Designer that all such permissions and authorities have been obtained. Evidence of permissions and authorities may be requested. The Customer acknowledges that any and all of the copyright, trade marks, trade names, patents and other intellectual property rights created, developed, subsisting or used in or in connection with the design and all rights in any core files created or developed by the Designer in connection with the design are and shall remain the sole property of the Designer and the Designer hereby grants to the Customer a non-exclusive right to use all such rights in accordance with the design specification.

9. Confidential information.

All information, drawings, specifications, documents, contracts, design material and all other data which the Designer may have imparted and may from time to time impart to the Customer relating to the know how, business, clients, prices, services, software, the website, contracts (including this Agreement), website design, architecture and content is proprietary and confidential but shall not include any part of such information which is in or comes into the public domain in any way without breach of this Agreement by the customer or any person to whom it makes disclosure or that the customer can show was in their possession or known to it by being in its use or being recorded in its files prior to receipt from the Designer and was not acquired by the customer from the Designer under an obligation of confidence or to have been independently developed by the customer without recourse to the Confidential information or the customer obtains such information or has such information available from a source other than the Designer without breach by the Customer. The Customer hereby agrees that it will use such confidential information and all other data solely for the purposes of this Agreement and that it will not at any time during or after the completion, expiry or termination of this Agreement use or disclose the same whether directly or indirectly, to any third party without the Designer's written consent. The Customer further agrees that it will not itself or through any subsidiary or agent, use, sell, licence, sub-licence, create, develop or otherwise deal in any confidential information supplied by the Designer or obtained pursuant to this Agreement. The Customer agrees to be bound by these provisions without limit in time from the date of disclosure of the confidential information.

The Designer agrees to keep Customer information confidential and stored securely.

10. Standard Media Delivery.

Unless otherwise specified in the project quotation, this Agreement assumes that any text will be provided by the Customer in electronic format (ASCII text files delivered on floppy disk or via e-mail or FTP) and that all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in .gif, .jpeg, .png or .tiff format.

11. Design Credit.

A link to the Designer will appear in either small type or by a small graphic at the bottom of the Customer's Web site. If a graphic is used, it will be designed to fit in with the overall site design.

12. Access Requirements.

If the Customer's Web site is to be installed on a third-party server, the Designer must be granted temporary read/write access to the Customer's storage directories, and those directories must be accessible via FTP. Depending on the specific nature of the project, other resources might also need to be configured on the server.

13. Post-Placement Alterations.

The Designer cannot accept responsibility for any alterations caused by a third party occurring to the Customer's pages once installed. Such alterations include, but are not limited to additions, modifications or deletions.

14. Domain Names.

The Designer may purchase domain names on behalf of the Customer. Payment and renewal of those domain names is the responsibility of the Customer. The loss, cancellation or otherwise of the domain brought about by non or late payment is not the responsibility of the Designer. The Customer should keep a record of the due dates for payment to ensure that payment is received in good time.

15. General.

The Designer warrants that the services provided under this Agreement will be provided with reasonable care and skill. These Terms and Conditions supersede all previous representations, understandings or Agreements. The Customer's signature below or payment of an advance fee constitutes Agreement to and acceptance of these Terms and Conditions. If a party does not enforce a right available to it under this Agreement in any particular instance, then it won't prevent it from enforcing that right in future or in any other instance. Neither party shall assign or transfer any of its rights under this Agreement without the prior written consent of the other party.

16. Force Majeure.

Neither of the parties to this Agreement shall be responsible to the other party for any delay in performance or nonperformance due to any causes beyond the reasonable control of the parties hereto ("Event of Force Majeure") but the affected party shall promptly upon the occurrence of any such cause so inform the other party in writing, stating that such cause has delayed or prevented its performance hereunder and thereafter such party shall take all action within its powers to comply with the terms of this Agreement. If the Force Majeure shall continue for a continuous period of two (2) months, then the party not in default shall be entitled to terminate this Agreement. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

17. Rights of Third Parties Act (1999).

Any person who is not a party to this Agreement, may not in his own right enforce any term(s) of this Agreement.

18. Notices.

All notices under this Agreement shall be in writing, sent by facsimile, e-mail or first class registered or recorded delivery post to the party being served at it's address specified above, or any other address of which such party shall have given notice in accordance with this clause, and marked for the attention of that party's signatory to this Agreement. The date of service shall be deemed to be the day following the day on which the notice was transmitted or posted as the case may be.

19. Variations.

The Designer reserves the right to alter these Terms and Conditions from time to time. By continuing to accept services from him after being notified by e-mail or otherwise of the altered Terms and Conditions the Customer will be deemed to be bound by the altered Terms and Conditions.

20. Liability.

The Designer's liability for any damages (including, without limitation, damages for loss of profits) arising in contract, tort or otherwise, resulting in any way from this agreement shall be limited, in aggregate over the entire period of the agreement, to the total amount paid by the Customer to the Designer. Nothing in these terms and conditions is to be interpreted as an attempt to limit or exclude the Designer's legal liability for any personal injury resulting from his negligence or to affect the Customers statutory rights. The Customer agrees to indemnify the Designer and will keep him fully indemnified against all loss, damage, costs, claims and expenses arising in any way from any service or product offered or provided via the Customer's web site and/or any breach of the terms and conditions set out in this document or associated documents. Each provision in this agreement limiting or excluding liability operates separately and the invalidity or unenforceability of any provision will not affect the validity or enforceability of any other provision. Whilst the Designer carries out regular virus checks on his systems he makes no warranties that files sent from him are free from virus infection and he recommends that the Customer virus checks all files received from him prior to opening or executing. The Designer accepts no liability for any loss, damage, costs, claims and expenses arising in any way from viruses transmitted unknowingly.

21. Outsourcing.

The Designer and the Customer are independent of each other and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Designer may, in addition to his own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Designer of his obligations under this Agreement.

22. Severability.

If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction such provision shall be severed and the remainder of the provisions herein shall continue in full force and effect as if this Agreement had been agreed with the invalid illegal or unenforceable provision eliminated.

23. Governing Law.

This Agreement shall be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.

Signed: For and on behalf of 'The Customer'.

Name:

Position:

Dated:

Signed: For and on behalf of 'The Designer'.

Name: Carl Smart

Dated: