



### **Standard Terms & Conditions**

These standard terms and conditions are in accordance with the recognised and standard practices of the graphic design profession, and provide the basis for an efficacious working relationship between the Designer and the Client, and form an integral part of the agreement between the Designer and the Client.

### **Professional Standing**

- The Designer subscribes to and abides by the code of ethics and professional standards of the Society of Graphic Designers of Canada.
- The Designer reserves the right to refuse any project or part thereof connected with activities or practices which the Designer may deem to be detrimental to the general public, to the environment, or to the reputation of the Designer or the Society.
- The Designer reserves the right to terminate this contract at any time they deem the professional relationship with the Client to be ethically unjust or abusive.

### **Use of Work**

- The work carried out and materials created during the course of this project shall not be used for any purpose other than that which is set out in the agreement as to Use and Rights without prior approval of the Designer.
- In no circumstances may work in rough form be used or published by the Client as finished work or be used as a basis for completion by others, without the prior written consent of the Designer.

### **Copyright and Ownership**

- Unless otherwise stated herein, all services provided and materials created in the course of this project by the Designer shall be for the exclusive use and benefit of the Client, other than for the promotional use of the Designer.
- The Designer is the first owner of all work or materials created during the course of this project. Copyright and other intellectual property rights, and all drawings, mockups, models, artwork, specifications, computer disks, electronic files, software documents and all other tangible materials, including preliminary concepts, accepted or rejected elements, works in progress, and finished materials which have been created or furnished by

the Designer during the course of this project shall remain the exclusive property of the Designer unless otherwise specifically assigned in writing.

- As set out in the agreement as to Use and Rights and upon payment in full of all fees and disbursements, the Client is entitled to these specific usage rights for the purpose of reproduction of approved final designs, after which all materials shall be returned, unaltered, to the Designer within 30 days of use.
- Unless otherwise stated, the Designer retains the moral rights to all work created in the course of this project.
- All intellectual property rights and materials shall remain the property of the Designer, whether assigned or not, until all the Designer's invoices are paid in full.
- If the Client wishes to make additional use of the materials or ideas obtained there from, the Client agrees to seek permission from the Designer and to make such further payments as are agreed to by both parties at that time.
- Rejected designs shall remain the exclusive property of the Designer.
- The Designer retains all rights for use of the work or materials created in the course of this project in any new media or mediums which may emerge in the future.
- Where copyright or other intellectual property rights are acquired by the Client, the Designer shall, when requested, assist in the application for design and copyright registration. The costs of such assistance and action shall be borne solely by the Client.

### **Conditions of Engagement**

- Fee quotations and proposals are subject to amendment or withdrawal by the Designer at any time prior to the signing of an agreement between the Client and the Designer.
- A signed agreement or other written confirmation of contract is required prior to the start of the project.
- The Client and the Designer each represent that they have full power and authority to enter into this agreement and that this agreement is binding upon the Client and Designer and enforceable in accordance with its terms.



- This agreement represents the entire agreement between the Client and the Designer, and may only be changed or modified in writing and with the approval of both parties.
- Neither the Client nor the Designer may assign or transfer their interest in this agreement without the written consent of the other.
- This agreement shall be binding upon both parties and their heirs, successors, personal representatives, and assigns.
- The waiver of a breach of any of the provisions of this agreement shall not be construed as a continuing waiver of other breaches or other provisions hereof.
- Schedules or time estimates are subject to change upon notification in writing by either party.
- Unless otherwise stated, the amount of written notice to be given by either party shall be two weeks.

#### **Confidentiality**

- The Client agrees to provide any and all information having direct bearing on the successful outcome of the project, and to inform the Designer in writing of any portion of the project which is confidential.
- The Designer agrees to treat such information as confidential.

#### **Compensation**

- The Client shall pay the Designer an advance against the total fees payable as set out in the agreement as to Fees and Terms of Payment. This advance shall be applied to services as performed from the outset of the project until such time as services performed exceed the advance amount, at which point the Client will be invoiced for services rendered to date.
- The Client shall pay the remainder of the fees upon receipt of invoice, net 30 days on approved credit. Thereafter interest will be charged on overdue accounts at a rate of 2% per month.
- When a project is longer than 30 days, invoices shall be issued monthly for services rendered to date, or at set stages in the project as set out in the agreement as to Fees.

#### **Disbursements**

- The Client shall reimburse the Designer for all out-of-pocket expenses and disbursements incurred by the Designer in the course of this project as set out in the agreement as to Expenses. These expenses shall be billed at cost plus a percentage surcharge for account handling and supervision as indicated.
- Typical out-of-pocket expenses include, but are not limited to: typography; photostats and copies; presentation and artwork materials; digital proofs; digital file conversions; fax, modem and long-distance telephone charges; couriers, postage and shipping; and travel.
- Estimates for reimbursable expenses are for planning and budgeting purposes only. The Designer shall strive to work within stated budgets, but is not liable if expenses exceed estimates as a result of changes to the project's parameters.
- Upon the Client's request at the start of the project, records of all expenses shall be retained by the Designer and shall be made available to the Client for review upon completion of the project. Third-Party Contracts
- The Designer may act on behalf of the Client to contract with other individuals or companies, to provide additional services such as, but not limited to writing, photography, illustration, pre-press services, printing, fabrication, programming, or manufacturing. The Client agrees to be bound by any terms and conditions of such contracts, including credits and usage rights, with respect to reproduction of the materials that may be claimed by these third parties.

#### **Rushed or Prolonged Work**

- Any work required in advance of an agreed schedule or timetable, any shortening of the contract period, or additional fees and expenses incurred during a project due to Client delays or extensions shall be charged and paid for at an additional rate agreed to in advance, or, failing agreement, at a reasonable rate to be determined at the discretion of the Designer.

#### **Materials Provided by the Client**

- The Client shall provide accurate and complete information and materials to the Designer, and guarantees and warrants that all materials are owned by the Client or that the Client has all necessary rights, including copyright and waiver of moral rights in such materials, to permit the Designer to use them for the project.



- All copy, photographs, artwork and other source materials submitted by the Client shall be of professional quality and in a form suitable for reproduction without further preparation or alteration. An additional charge may be made when materials are submitted by the Client in such a form which prevents them from being readily utilised.

- Copy provided by the Client on disk or as electronic files shall be readily usable. If the Client has specific requirements for how electronic files are to be prepared, the Client shall inform the Designer of same at the outset of the project.

- The Designer shall return all materials provided by the Client within 30 days after project completion and payment of all invoices.

#### **Client Approval**

- The Client shall appoint a sole representative with full authority to provide necessary information required by the Designer and to provide reasonable approvals.

- The Client shall proofread and approve all elements of final designs. Approval must be provided before production can continue. Corrections, if required, shall be identified on proofs, artwork, facsimiles, or drawings and are to be returned to the Designers marked "O.K." or "O.K. with correction," with the name or initials of the individual duly authorised to pass on same. If a copy of the revisions is required, a request must be made when the above mentioned articles are returned to the Designer.

#### **Production**

- On all work where the Client assumes responsibility for production, printed proofs, cutting copies, prototypes and shop models must be approved by the Designer prior to use. The Designer shall be available at reasonable times to provide advice during the production period and for approval of minor modifications of the project which may be required.

- When the Designer is engaged in a supervisory capacity and assumes responsibility for production on behalf of the Client, the Client agrees to abide by decisions made by the Designer.

- When the Designer assumes responsibility for production, both the Designer and the Client shall be governed by recognised trade standards and customs.

#### **Revisions and Additions**

- Any revisions, additions, or alterations to the project modifying the terms of the agreement as the Services to be performed and not included in any fee specified, shall be billed as additional services. Such additional services shall include, but shall not be limited to, changes in the extent of work, changes in the complexity of any elements of the project, and any changes made after approval has been given for a specific stage of design, documentation, or preparation of artwork.

- The Designer shall keep the Client informed of additional services that are required, and shall request the Client's approval for any additional services which cause the total fees to exceed the fixed or estimated fees set forth in this agreement.

#### **Storage and Access**

- The Designer shall retain and store all final electronic files, finished artwork, drawings, and specifications for which specific reproduction rights have been granted, for a minimum period of 12 months after completion of the project. Upon expiration of this period, all such materials may be destroyed by the Designer, upon reasonable notification to the Client. The Designer is not responsible for information or materials lost or destroyed due to disk failure or other unforeseeable hazards.

- The Client shall have reasonable access to all stored materials for the purpose of review, and shall pay the Designer a reasonable fee for de-archiving or retrieving materials, should expenses be incurred.

#### **Modifications**

- No modifications or alterations to any designs or other work created by the Designer shall be made without written consent of the Designer. In the event that reprints are required, these shall not differ in any way from the originals supplied without the written consent of the Designer. Any modifications or alterations shall be carried out by or under the supervision of the Designer and shall be paid at a rate agreed to by both parties in advance.

#### **Design Credits**

- The Designer shall be entitled to claim authorship of a design, and a published or manufactured work shall bear a credit to the Designer at the discretion of the Designer. The Designer's consent in writing shall be obtained before the Designer's name is reproduced in any finished product or otherwise published by the Client.



### **Samples and Copies**

- The Client shall provide the Designer with a reasonable number of samples, specimens, or photographs of each printed or manufactured design. These samples shall represent the highest quality of work produced.
- The designer shall have the right to use samples and make copies for publication, exhibition or other promotional purposes.

### **Warranty**

- The Designer warrants that the work provided to the Client by the Designer is original. The Designer agrees to indemnify the Client in the event of any claim based on the breach of this warranty.

### **Liability**

- The Designer is not responsible for errors or omissions in any work produced as per the Client's "O.K.". No financial responsibility is assumed by the Designer for errors or damages resulting from such errors.
- The Client will indemnify, defend, and save harmless the Designer against any claim, damages and expense, actions or causes of action arising from or prompted by the use of any material supplied to the Designer by the Client or its agents.
- All property belonging to the Client or its agents which is handled and stored by the Designer shall be done so at the Client's own risk.
- The Designer is not responsible for delays in delivery caused by acts of God, strikes, fires, floods or any other similar circumstances beyond the Designer's control.

### **Arbitration**

- Either party may request that any dispute arising out of this agreement may be submitted to binding arbitration before a mutually agreed upon arbitrator. The arbitrator's decision or award shall be final.

### **Termination**

- This agreement shall be terminated if either the Client or the Designer commits a breach and fails to remedy the breach within 14 days of receiving written notification from the other party specifying the breach and requiring its remedy.
- On termination or postponement of this project, or any part of it, for any reason, the Client shall pay the Designer for the work completed to date, together with all expenses incurred. Any advance of fees will be credited against the amount due.
- In the event of termination, the Designer shall retain the copyright even if the fees agreed to in advance have included the assignment of the copyright.

### **Applicable Law**

- This agreement and all terms and conditions shall be governed and construed in accordance with the laws of Canada and the laws of the province of the Designer's principal place of business.