

OTTLEY DESIGN COMPANY TERMS AND CONDITIONS

1. Application of Conditions

These Terms and Conditions shall apply to all services rendered by Ottley Design Company (herein termed ODC) and shall be incorporated into every agreement between ODC and any customer placing an order with ODC. No variation of these Terms and Conditions will be effective unless it is in writing and signed by the Director of ODC on behalf of ODC.

2. Estimates

- (a) Any estimate given by ODC for any project of work is based upon an appraisal of the job specifications and materials supplied by the customer and shall take into account amongst other things any time limits placed upon ODC by the customer for completion of the project.
- (b) The customer shall be responsible for any increases in ODC's costs as a result of any changes to such job parameters or other material made by the customer either directly or indirectly after the date of any estimate given by ODC and for any increase in costs by way of overtime charges if the time and date for completing a project is brought forward by the customer either directly or indirectly.

3. Confirmation

Written confirmation accepting our estimate or a purchase order is required before work can commence.

4. Approvals

In the case of printed work, the client will be required to approve and sign off designs, copy, artwork and proofs before final printing can begin. ODC will take reasonable precaution to ensure accuracy of text on visual materials, but ultimate responsibility lies with the client.

5. Cancellation

- (a) In the event that any job is cancelled by the customer after having been placed with ODC, the customer will be responsible to ODC for the cost of artwork carried out and other costs incurred by ODC up to the date of such cancellation. In addition, the customer will be responsible for paying any cancellation fee incurred by ODC to any sub-contractor of ODC which becomes due and payable as a result of such cancellation.
- (b) Any cancellation must be in writing and must be sent or delivered to ODC and shall be deemed effective only as at the date received by ODC. Nothing herein shall constitute a penalty and both ODC and the customer agree that any cancellation fee referred to herein is a fair and proper assessment of ODC's loss.

6. Payment

All payments to ODC shall be made within thirty days of the date of any invoice submitted by ODC. ODC reserves the right to require a customer to make full or part payment prior to supply of work and/or to submit interim invoices for work done before completion of any job. All queries regarding invoices should be brought to the attention of ODC within 14 days of receipt of invoice. ODC reserves the right to charge interest on accounts outstanding 30 days after the date of invoice, at a rate of 2% per month of the outstanding amount.

Payments may be made by cheque or previously agreed electronic funds transfer. Returned cheques will incur an additional fee of £50 per returned cheque.

ODC reserves the right to consider an account to be in default in the event of a returned cheque. An account shall be considered default if it remains unpaid for 60 days from the date of invoice, or following a returned cheque. ODC shall be considered entitled to remove ODCs and/or the customer's material from any and all computer systems, until the amount due has been fully paid. This includes any and all unpaid monies due for services, including, but not limited to, hosting, domain registration, design and project management, sub-contractors, printers, photographers and libraries. Removal of such materials does not relieve the customer of its obligation to pay the due amount. Customers whose accounts become default agree to pay ODC reasonable legal expenses and third party collection agency fees in the enforcement of these Terms and Conditions.

7. Sub-Contracting

ODC shall be entitled to sub-contract any work agreed to be supplied under any booking to any third parties as ODC shall in its absolute discretion think fit but ODC shall not be responsible to the customer for any delays occasioned by a sub-contractor failing to meet deadlines imposed upon it by ODC for completion of any job for any reason outside the direct control of ODC.

8. Publicity

ODC reserves the right to publicise work produced for the client other than when contractually bound not to do so. ODC requests all printed literature designed by ODC to have a discreet reference number for digital archiving and a design credit to avoid passing off.

9. Retention of Title

The ownership of any design or any other material prepared by ODC hereunder shall remain with ODC until all sums owing and due to ODC by and from the customer (whether in respect of an invoice relating to such material or otherwise howsoever) have been discharged in full. If a choice of design is presented, only one solution is deemed to be given by ODC as fulfilling the contract, all other designs remain the property of ODC. ODC reserve the right to demand payment in full before any design or other material is supplied to the customer. For the avoidance of doubt the parties hereby agree that ODC shall be and remain the owner of the entire copyright and other intellectual property rights in any design or other copyright work prepared by ODC hereunder for the full duration of copyright therein.

The customer may request in writing from ODC, the necessary permission to use materials (for which ODC holds the copyright) in forms other than for which it was originally supplied, and ODC may, at its discretion, grant this subject to additional charges. Such permission must be obtained in writing before it will allow any of the aforesaid artwork, images, text, or other data to be used.

10. Extent of ODC's Responsibility

- (a) ODC's responsibility is restricted to providing graphic design services. It shall be the responsibility of the customer to ensure that any third party's approval which is required in respect of the said job be obtained. Any expense incurred by ODC in providing further services to obtain such third party approval shall be charged to the customer at ODC's standard rates.
- (b) The customer shall be liable to ODC for any increased costs occasioned by any changes to the job specification required by the customer.

11. Limitation of Liability

- (a) ODC shall not be liable for any loss or damage to any property of the customer howsoever arising, whether or not the same is caused by the negligence of ODC or its employees, agents or sub-contractors.
- (b) All implied conditions and warranties, statutory or otherwise are hereby excluded.
- (c) ODC's liability (if any) to the customer shall in all cases be limited to the amount of the job payable by the customer and in no circumstances shall ODC be liable for any loss of profit or other consequential loss suffered by the customer.
- (d) If ODC is unable to provide any facilities or services agreed to be provided by ODC to the customer due to circumstances beyond its control ODC shall not be liable for any loss suffered or any sum payable by the customer as a result thereof.
- (e) ODC will make every effort to ensure all delivery deadlines are met and goods are received in good order. However, ODC accepts no liability for any loss arising from third party delays or damage.

12. Customer's Indemnities

The customer shall fully indemnify ODC or (where relevant) its sub-contractors, agents or employees from and against all actions, proceedings, claims, demands, damages, fees, costs, losses and expense or other liabilities whatsoever made against or incurred or suffered by ODC or sub-contractors, agents or employees by reason of or in respect of:-

- (a) any infringement of copyright or trademark or any passing off or any other infringement or interference with any proprietary right or interest of any third party or any civil or criminal action or prosecution for defamation or obscenity or for any breach of any confidence or misuse of any confidential information arising out of any work carried out by or on behalf of the customer;
- (b) any breach by the customer of any of these Terms and Conditions;
- (c) any personal injury or death or loss or damage to property caused by or arising out of or in connection with the use by the customer of any facilities provided by ODC except where the same is attributable to the negligence or breach of contract of ODC or its servants, agents or sub-contractors;
- (d) any breach by ODC, its sub-contractors, agents or employees of its or their obligations under any contract with the customer or any negligent act or omission of ODC, its sub-contractors, agents or employees resulting in loss, damage, injury to the customer its agents, sub-contractors or employees, or in any costs or expenses payable by the customer, its agents, sub-contractors or employees.
- (e) the customer agrees that ODC holds no responsibility for any amendments made by any third party, before or after a design is published.

13. Law and Jurisdiction

These Terms and Conditions shall be interpreted in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.