

LIGHTSPEED DESIGN - TERMS AND CONDITIONS (CUSTOMER COPY)

1 INTERPRETATION AND DEFINITIONS

1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise requires:

"Lightspeed Design"

means Mark Fogarty whose trading address is situate at 15 St Marks Road, Brownhills, Walsall, West Midlands, WS8 7AQ;

"the Conditions"

means these terms and conditions;

"the Customer"

means the person, firm or company who commissions the services of Lightspeed Design;

"Intellectual Property Rights"

means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"the First Instalment Payment"

means the first instalment payment made by the Customer to Lightspeed Design which is to be agreed by Lightspeed Design pursuant to clause 3;

"the Materials"

means all documents, information and materials provided by Lightspeed Design relating to the Project which including computer programs, data, reports and specifications belong to a third party;

"the Project"

means the work undertaken by Lightspeed Design for the Customer;

1.2 Any headings contained in these Conditions are for reference purposes only and do not form part of the Conditions and shall not be deemed to alter or affect the meaning of any of the provisions hereof;

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns;

1.4 Words in the singular shall include the plural and vice versa;

1.5 A reference to writing or written includes faxes and e-mail;

1.6 These Conditions shall apply to and be incorporated into the contract between Lightspeed Design and the Customer and prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing;

2 COMMENCEMENT AND DURATION

2.1 By commissioning Lightspeed Design to undertake the Project on their behalf, the Customer agrees that the Conditions define the contract between the parties and that all further Projects or services that Lightspeed Design may be contracted to provide for the Customer will be subject to the Conditions;

2.2 The services carried out under these Conditions shall continue until the Project is completed or until termination by either party giving the other party not less than 1 months notice in writing;

2.3 All sums payable to Lightspeed Design under these Conditions shall become due immediately on its termination, despite any other provision;

3 QUOTATIONS AND ORDERS

3.1 When Lightspeed Design is in receipt of a signed order form complete with a First Instalment Payment as set out on the order form, Lightspeed Design will commence work. No work on the Project will be entered into until such notification and payment has been received.

3.2 All quotations provided by Lightspeed Design to the Customer are estimates only;

3.3 If the Customer requires any change or alteration to the works stated in any quotation, Lightspeed Design and the Customer shall, prior to any change being implemented agree the nature of the change, the procedures for implementation of such a change and the change in the fees. Lightspeed Design will continue to provide the services described in the quotation until any such change has been formally proposed and agreed by both parties;

3.4 Until Lightspeed Design has been paid in full the Customer shall not modify or adapt any work to the Project except with the prior written consent of Lightspeed Design or as otherwise permitted by law where all modifications and adaptations shall belong to and vest in Lightspeed Design unless otherwise agreed and specified in writing on the quotation;

3.5 When instructions are received orally by Lightspeed Design it shall have no liability to the Customer for any misunderstanding or misrepresentation which may arise;

3.6 Any quotes provided orally by Lightspeed Design may be subject to change once Lightspeed Design has received detailed written instructions from the Customer;

3.7 Lightspeed Design may at its sole discretion not accept an order placed by the Customer;

3.8 The Customer is responsible for ensuring that all materials that it provides Lightspeed Design for use in the Project are legal and suitable for publication. It is the responsibility of the Customer that it has the appropriate authorities in place to use the material and that there is no breach or infringement of Intellectual Property Rights;

3.9 Lightspeed Design at its discretion may refuse to work with the materials provided if Lightspeed Design consider the materials to be unsuitable, illegal, obscene, offensive, libellous or otherwise unsuitable for publication;

4 THE PROJECT

4.1 The Project shall be agreed in the following manner:

4.1.1 the Customer shall provide Lightspeed Design with a request for a Project, setting out the requirements and specifications of the services which it is requesting from Lightspeed Design, including a description of what work is to be done, dates by which it is requested to be started and finished;

4.1.2 Lightspeed Design and the Customer shall discuss and agree the Project and when it has been agreed, Lightspeed Design shall commence work on the Project subject to these Conditions;

4.2 Lightspeed Design shall use reasonable endeavours to meet any dates specified by the Customer but any such dates shall be estimates only and time shall not be of the essence;

4.3 Lightspeed Design shall submit to the Customer proofs of the Project for approval and upon receipt of the proof the Customer shall provide Lightspeed Design with written confirmation of approval of the proofs;

5 FEES

5.1 For each Project, the Customer will receive an estimate outlining the Project specifications and estimated fees based on current hourly rates;

5.2 Lightspeed Design will begin work upon the Customer's written approval of the estimate and this will constitute an agreement between the parties;

5.3 The Customer agrees to pay Lightspeed Design in accordance with the terms specified in each proposal and/or estimate;

5.4 Any estimates provided by Lightspeed Design are valid for 30 days from the date of the estimate;

5.5 All charges quoted to the Customer shall be exclusive of VAT which Lightspeed Design shall add to its invoices at the appropriate rate;

5.6 In respect of cancellations Lightspeed Design at its discretion may charge for all abortive work undertaken by Lightspeed Design. In the event that the printing process has started then the Customer shall be liable for the full contractual fee payable;

5.7 Lightspeed Design shall not be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Project;

6 PAYMENT

6.1 Unless otherwise agreed in writing by Lightspeed Design the Customers will be required to pay the First Instalment Payment before work can begin;

6.2 The Customer shall pay all printing costs in advance to Lightspeed Design and such costs to be received by Lightspeed Design in cleared funds before Lightspeed Design shall authorise printing;

6.3 All payments due to Lightspeed Design are to be received in cleared funds by Lightspeed Design no later than 30 days from invoice date unless alternative credit terms are agreed in writing by Lightspeed Design;

6.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay Lightspeed Design on the due date, Lightspeed Design may charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and Lightspeed Design may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and suspend all services and not undertake any further work on the Project until payment has been made in full;

6.5 In the event that the Customer goes into insolvency or being an individual is declared bankrupt then Lightspeed Design will cease work immediately on the Project and all fees due shall be immediately payable;

6.6 The Customer shall pay Lightspeed Design's costs, charges and expenses directly or indirectly incurred in obtaining or otherwise enforcing payment of outstanding accounts;

6.7 Time for payment under these Conditions shall be of the essence;

7 REVISIONS AND ALTERATIONS

7.1 Any new work requested by the Customer and performed by Lightspeed Design after a proposal and/or estimate has been approved is considered a reversion or alteration. If the Project changes to an extent that substantially alters the specifications described in the original estimate, Lightspeed Design will submit a revised proposal and/or estimate to the Customer and both parties must agree to a revised additional fee before further work proceeds;

7.2 Any alterations and other copy changes requested after layouts or mechanicals are completed are to be billed at Lightspeed Design's standard hourly rates. Overtime and rushed order estimates are based on a reasonable time schedule and may be revised to take into consideration the Customer's priority scheduling requests requiring overtime and/or weekend working to be at the discretion of Lightspeed Design;

7.3 It is the Customer's obligation to ensure that Lightspeed Design is informed of deadlines essential to the Customer to enable Lightspeed Design to provide an accurate estimate of costs;

7.4 In the event that third party contracts are required the customer shall be responsible for all of these costs in advance. Should there be an increase in costs above the original quotation then these costs shall also be passed on to the Customer ;

8 EXCLUSION AND LIMITATION OF LIABILITY

8.1 Lightspeed Design shall not be liable for losses special to the particular circumstances of the Customer, nor indirect or consequential loss including loss of profits, loss of business, loss of goodwill, damage to property, wasted expenditure, loss of use, loss of corruption of data or information or economic loss;

8.2 The Customer agrees to exercise due diligence in its direction to Lightspeed Design regarding preparation of materials and must be able to substantiate all claims and representations;

8.3 The Customer is responsible for all trademark, copyright and patent infringement clearances and is responsible for arranging prior to publication, any necessary legal clearances, licences, usage or royalty payments;

8.4 Lightspeed Design's liability for any loss or damage direct or otherwise and howsoever caused whether intended or not, including negligence, or otherwise shall not exceed the amount invoiced by Lightspeed Design to the Customer hereunder;

8.5 If Lightspeed Design's performance of its obligations is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, Lightspeed Design shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay;

8.6 The Customer shall be liable to pay to Lightspeed Design, on demand, all reasonable costs, charges or losses sustained or incurred by Lightspeed Design (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations;

8.7 The Customer shall indemnify Lightspeed Design against any claims, costs, expenses incurred as a result of publishing any materials which is deemed to be obscene, libellous or which may constitute an infringement of Intellectual Property Rights of any third party;

8.8 Lightspeed Design may from time to time and without notice change the services that it provides in order to comply with any applicable law or statutory requirements;

8.9 The Customer will indemnify and hold Lightspeed Design harmless for any loss or expense (including legal fees) and agree to defend Lightspeed Design in any actual lawsuit, claim or action arising from the Project this includes, but is not limited to claims made against the Customer and/or in relation to the materials and/or arising from the publication of material that is prepared by Lightspeed Design and approved by the Customer before publication;

8.10 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded;

8.11 Nothing in these Conditions limits or excludes the liability of Lightspeed Design:

8.11.1 for death or personal injury resulting from negligence; or

8.11.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by Lightspeed Design;

9 PROOFS, ERRORS AND OMISSIONS

- 9.1 It is the Customer's responsibility to check proofs carefully or accuracy in all respects, including but not limited to prices, spelling, dimensions and artwork. Lightspeed Design is not liable for any errors or omissions whatsoever;
- 9.2 The Customer's signature or that of his/her authorised representative is required on all proofs of artwork prior to release for printing or other implementation;
- 9.3 Any photographs provided by the Customer are to be considered ready for production and will not be altered by Lightspeed Design except on the written confirmation of the Customer providing authorisation to alter the photographs and Lightspeed Design shall not be liable for any errors or omissions in altering the photographs;
- 9.4 Lightspeed Design does not undertake printing and if printing is requested by the Customer Lightspeed Design may use a printing house of its choice and the Customer shall be responsible for the costs of the same. Any printing carried out by a third party on behalf of Lightspeed Design shall not be the responsibility of Lightspeed Design and Lightspeed Design shall not be responsible for any colour variance occurring during any printing;
- 9.5 Any graphic design work, artwork and proofs may be delivered to the Customer by Lightspeed Design by files on disc or via email:

10 PROPERTY AND RISK

- 10.1 Any property provided by the Customer to Lightspeed Design shall be at the risk of the customer whether it is kept at Lightspeed Design's premises or in transit ;
- 10.2 In the absence of negligence on part of Lightspeed Design, Lightspeed Design shall not be responsible for loss, destruction or damage or unauthorised use by others of such property;
- 10.3 Lightspeed Design will use reasonable endeavours to guard against any loss arising from the failure of third party suppliers, media or others to perform in accordance with their commitments but Lightspeed Design shall not be responsible for failure on the part of any such third party suppliers, media or others;
- 10.4 Lightspeed Design shall not in any way be held responsible for quality, price, performance or delivery of materials made or supplied by others where the work has been placed directly by the Customer or his agents:

11 LIEN

All materials or property belonging to the Customer, as well as work performed, may be retained as security until all claims by Lightspeed Design against the Customer are satisfied:

12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 Lightspeed Design gives no warranty, representation or undertaking in relation to any third party Materials or works;
- 12.2 Once a Project has been delivered by Lightspeed Design and is fully paid for by the Customer, Lightspeed Design will assign the reproduction rights of the design for the use(s) described in the proposal;
- 12.3 All copyright, design right, registered designs, trade marks, patents, database rights and confidential information and ideas and all other rights whatsoever of a like nature world wide whether registered or not of whatever nature in material devised, created or commissioned by Lightspeed Design will belong to Lightspeed Design until Lightspeed Design has been paid in full and upon payment in full all copyright shall vest in the Customer;
- 12.4 All copyright, the rights to all design and artwork, including but not limited to photography, music and or illustration created by independent photographers, artists or illustrators retained by Lightspeed Design, or purchased from a stock agency on behalf of the Customer, remain with the individual designer, artist, photographer or illustrator;
- 12.5 Until full payment has been received by Lightspeed Design the Customer may not use or reproduce the design, work or the property in the Project for a purpose other than the one(s) originally stipulated in the Project;
- 12.6 The Customer may use the design Lightspeed Design has created and/or the images within it for another purpose other than the Project, including a reprint or exhibition, so long as all payments due to Lightspeed Design have been paid in full;
- 12.7 Lightspeed Design reserves the right to photograph and/or distribute or publish for Lightspeed Design's promotional and marketing needs any work created in the Project for the Customer, including rough sketches, visuals, mock-ups and presentations, as samples for Lightspeed Design portfolio, newsletter, brochures, presentations, website and for entry for awards:

13 RIGHTS OF OWNERSHIP

Lightspeed Design will endeavour to store files on computer disks for a period of 12 months beyond the delivery of the Project thereafter Lightspeed Design reserves the right to discard them without notice to the Customer:

14 BREACH OF CONDITIONS

- 14.1 Lightspeed Design shall be entitled to immediately restrict, suspend or terminate the Project and the Customer's use of any works and/or terminate work on the Project upon the Customer's material breach of these Conditions (including without limitation the non-payment of any sum as and when due) unless the Customer remedies such breach within 14 days of its occurrence;
- 14.2 Upon material breach of the Conditions by the Customer any sums payable to Lightspeed Design shall be due and payable immediately:

15 CONFIDENTIALITY

- 15.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Lightspeed Design, its employees, agents or sub-contractors and any other confidential information concerning Lightspeed Design's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to Lightspeed Design, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer;
- 15.2 All materials, drawings, specifications and data supplied by Lightspeed Design to the Customer shall, at all times, be and remain the exclusive property of Lightspeed Design, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Lightspeed Design, and shall not be disposed of or used other than in accordance with Lightspeed Design's written instructions or authorisation;
- 15.3 This Condition 15 shall survive termination of the agreement between the Customer and Company, howsoever arising:

16 COMPLAINTS

- 16.1 Any complaints or claims made against Lightspeed Design must be received within 7 days of receipt of the Project by the Customer;
- 16.2 In the event that the complaint or claim is received outside of the 7 day period set out under Condition 16.1 then Lightspeed Design shall not be liable for the same:

17 FREELANCE

- 17.1 This Condition 17 shall apply in the event that Lightspeed Design is acting as a freelancer;

- 17.2 The freelance rates are to be confirmed by Lightspeed Design in advance in writing to the Customer;
- 17.3 The Customer must sign all time sheets of the representative of Lightspeed Design attending to carry out the freelance work;
- 17.4 Lightspeed Design shall at its discretion send to the Customer any employee or representative to carry out the freelance work and Lightspeed Design shall not be liable in the event that this individual is not available to attend to undertake the freelance work;
- 17.5 In the event that the Customer wishes to cancel any contract for Lightspeed Design to provide freelance work cancellation fees shall apply as follows:-
- 17.5.1 for one weeks notice 20% of the cost of total time booked shall be charged to the Customer;
- 17.5.2 for 48 hours notice 50% of the cost of total time booked shall be charged to the Customer;
- 17.5.3 for 24 hours notice or less 100% of the total time booked shall be charged to the Customer;
- 17.6 In the event that there are interruptions to e-mail and/or difficulties with transmissions and computer failures then Lightspeed Design shall not be responsible for any losses incurred by the Customer and Lightspeed Design shall be paid during the time period of the interruptions and/or difficulties with transmissions and computer failures;
- 17.7 The Customer shall be responsible for seeking approvals from its' customers for all alterations and/or revisions to all freelance work and/or for obtaining final approval for print work undertaken by Lightspeed Design and for the avoidance of doubt Lightspeed Design shall not be liable in respect of such alterations and/or additions and/or obtaining final approval of print work;
- 17.8 Conditions 3.4, 5.6, 6.2, 7 and 12 shall not apply to any freelance work undertaken by Lightspeed Design;
- 17.9 In the event of conflict between these Conditions and this condition 17 then the Conditions shall prevail:

18 DATA PROTECTION

The Customer acknowledges and agrees that details of the Customer's name and address may be submitted to a credit reference agency, and personal data will be processed by and on behalf of Lightspeed Design in connection with the Project:

19 SEVERANCE

- 19.1 If any provision (or part of a provision) of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force;
- 19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal:

20 ASSIGNMENT

- 20.1 The Customer shall not, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions;
- 20.2 Lightspeed Design may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions:

21 NO PARTNERSHIP OR AGENCY

Nothing in these Conditions is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power):

22 RIGHTS OF THIRD PARTIES

These Conditions are for the benefit of the parties to them and (where applicable) their successors and permitted assigns and are not intended to benefit, or be enforceable by, anyone else:

23 NOTICES

Any notice given under these Conditions shall be in writing, sent for the attention of the person, and to the address, or such other address or person as the relevant party may notify to the other party. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 23 is not within business hours then at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted to the address provided by the other party:

24 FORCE MAJEURE

Any work on the Project, storage of files and property belonging to the Customer will be established and adhered to by both Customer and Lightspeed Design provided that neither shall incur any liability, penalty or additional cost due to delays caused by a state of war, riot, civil disorder, fire, industrial dispute or strike, accidents, energy failure, equipment breakdown, delays in shipment by suppliers or carriers, action of government or civil authority, and acts of God or default of third party suppliers to Lightspeed Design or other causes beyond the control of Lightspeed Design:

25 WAIVER

Failure by Lightspeed Design to enforce any of these Conditions shall not be construed as a waiver of that condition or any other condition:

26 ENTIRE AGREEMENT

- 26.1 These Conditions constitute the entire agreement between the parties and supersedes all prior agreements and/or arrangements in connection with the subject matter hereof;
- 26.2 No director, employee or agent of Lightspeed Design is authorised to make any representation or warranty not contained in these Conditions and the Customer acknowledges that he has not relied on any such oral or written representations;
- 26.3 No variation or waiver of any of the provisions of these Conditions shall be binding unless in writing and signed by a duly authorised director or employee of Lightspeed Design:

27 APPLICABLE LAW

The validity and enforceability of these Conditions will be interpreted in accordance with the laws of England but Lightspeed Design reserves the right to bring proceedings in connection with these Conditions in any other court of competent jurisdiction:

