

Terms & Conditions

1. Definitions

In these terms and conditions the *Agency* shall mean Seagull Digital Ltd incorporated and registered in England with company number 10849375 whose registered office is at 1, Kensington Park Road, W11 3BY.

The *Customer* shall mean the Party with whom the Agency enters into a Contract, even if fees are agreed to be invoiced to a nominated third party.

2. Contracts terms

These Conditions shall apply to all goods and services supplied by Seagull Digital. Any provision, stipulation or condition in the conditions of order of the person, firm or company whom such goods and services are supplied – the Customer – or otherwise which conflicts with or in any way qualifies or negates any of these Conditions shall have no effect and these Conditions shall prevail.

These Conditions are to complement any Project Proposal drawn up for the person, firm or company to whom such goods and services are supplied.

3. General Assumptions

3.1 Seagull Digital timelines and costs are based on the availability of Customer meeting participation and approval. Delay in participation may result in the delay of the whole project, and Seagull Digital will not bear accountability for any delays in the project as a result of Customer failure to meet approval, content supply or meeting deadlines.

3.2 Where necessary, Seagull Digital may engage specialist 3rd party partners and suppliers to ensure the timely and quality delivery of any works commissioned. These include but are not limited to print suppliers, sign manufacturers and installers, photographers, illustrators, film makers, interior designers, external website developers and coders. and other relevant partners to provide an extensive high-quality service offering beyond immediate in-house capabilities.

3.3 Should further deliverables or services be required, a change order will be issued to cover additional costs, as per the change of scope procedure outlined in the proposal submitted to the Customer by Seagull Digital.

3.4 If multiple design concepts are submitted, only one concept is deemed to be given by Seagull Digital as fulfilling the contract. All other artwork designs remain the property of Seagull Digital unless agreed in writing.

4. Charges and Payment

4.1 There are 3 main ways the Agency charges the Customer:

(a) The Agency issues one invoice after many small jobs. Each job will have to be agreed in writing by the Agency and the Customer. The number of small jobs included in each invoice is at the discretion of the Agency. The payment is to be made within 14 days upon receipt of the invoice.

(b) The Agency issues a “split quotation”. Following Acceptance, the Agency shall issue an invoice in respect of the Charges, and the Customer shall pay 50% of the total amount at the start of the project and 50% within 14 days of the work completion, except for any amount in respect of which there is a genuine dispute.

(c) The Agency issues a “quotation by phases”. If a quotation has been provided where a job will be approached in ‘phases’ (for example, an initial 50% deposit and two further payments of 25% each), each phase will need to be paid in full on completion of each stage, before the Agency is able to progress to the next phase. The final payment is to be made within 14 days of work completion.

4.2 We reserve the right to retain all work, materials and any other items in our possession relating to any matter until all invoices are paid in full.

4.3 All costs stated on estimates are based on information given at the time of the estimate being issued. Any additional information supplied may result in additional costs.

4.4 The Agency doesn’t charge VAT.

4.5 Payments are to be made by online transfer unless otherwise agreed.

5. Intellectual property rights

5.1 Until payment is received in full, all designs, artwork and rights to design and artwork (whether in digital or printed format) remain the intellectual property of Seagull Digital. Full copyright and ownership of all 'commissioned' work will reside with Seagull Digital until full payment has been received, at which point Seagull Digital will surrender to the Customer, all claims of ownership and full copyright for final work produced. However alternative designs, concepts, options, files, images or documents developed throughout the process remain the intellectual property of Seagull Digital unless agreed otherwise in writing.

5.2 Seagull Digital will never knowingly infringe any copyright or trademark and will deliver, to the best of its knowledge, creative solutions that are original and unique. Unless otherwise agreed in writing, it is the responsibility of the Customer to ensure that no copyright or trademark has been infringed and to make their own application for copyright or trademark with the 'UK Intellectual Property Office' if required.

6. Data protection

6.1 The Agency warrants that, to the extent it processes any Personal Data on behalf of the Customer:

- (a) it shall act only on instructions from the Customer; and
- (b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

6.2 In this clause 6, Personal Data has the meaning given in the Data Protection Act 1988.

7. Termination

Either party may terminate this agreement immediately at any time by written notice to the other party if:

- (a) that other party commits any material breach of its obligations under this agreement which (if remediable) is not remedied within 14 days after the service of written notice specifying the breach and requiring it to be remedied; or

- (b) that other party:
 - (i) ceases to trade (either in whole, or as to any part or division involved in the performance of this agreement); or
 - (ii) becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or
 - (iii) a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given or documents relating to such an appointment are filed with any court; or
 - (iv) the ability of that party's creditors to take any action to enforce their debts is suspended, restricted or prevented or some or all of that party's creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or
 - (v) any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction); or
- (c) that other party has been subject to a Force Majeure Event for a continuous period of more than 90 days.

8. Force majeure

8.1 The definition in this clause applies in this agreement.

Force Majeure Event: any event arising which is beyond the reasonable control of the affected party (including any industrial dispute affecting any third party, governmental regulations, fire, flood, disaster, civil riot or war).

8.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under this agreement shall forthwith notify the other and shall inform the other of the period for which it is estimated that such failure or delay will continue. The affected party shall take all reasonable steps to mitigate the effect of the Force Majeure Event.

9. Confidentiality

9.1 The definition in this clause applies in this agreement.

Confidential Information: all information whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or pursuant to discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

9.2 Each party shall protect the Confidential Information of the other party against unauthorised disclosure by using the same degree of care as it takes to preserve and safeguard its own confidential information of a similar nature, being at least a reasonable degree of care.

9.3 Confidential Information may be disclosed by the receiving party to its employees, affiliates and professional advisers, provided that the recipient is bound in writing to maintain the confidentiality of the Confidential Information received.

9.4 The obligations set out in this clause 9 shall not apply to Confidential Information which the receiving party can demonstrate:

- (a) is or has become publicly known other than through breach of this clause 9; or
- (b) was in possession of the receiving party prior to disclosure by the other party; or
- (c) was received by the receiving party from an independent third party who has full right of disclosure; or
- (d) was independently developed by the receiving party; or
- (e) was required to be disclosed by a governmental authority, provided that the party subject to such requirement to disclose gives the other party prompt written notice of the requirement.

9.5 The obligations of confidentiality in this clause 9 shall not be affected by the expiry or termination of this agreement.

10. Assignment

The Agency may not assign or transfer any of its rights or obligations under this agreement. The Customer may assign or transfer any of its rights or obligations under this agreement, provided it gives prior written notice to the Agency.

11. Variation and waiver

11.1 A variation of this agreement shall be in writing and signed by or on behalf of both parties to this agreement.

11.2 A waiver of any right under this agreement is only effective if it is in writing, and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given. No waiver shall be implied by taking or failing to take any other action.

11.3 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

12. Governing law and jurisdiction

12.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of England.

12.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).