

Matt Willatt Design Limited

Terms and Conditions

Mishcon de Reya LLP
Africa House
70 Kingsway
London WC2B 6AH
Tel: +44 20 3321 7000
Fax: +44 20 7404 5982

© Matt Willatt Design Ltd 2019

A copy of the most up-to-date version of this document is available at <http://mattwillatt.co.uk/terms.pdf>

All work is carried out by Matt Willatt Design Ltd (MWD) on the understanding that the client has agreed to MWD's terms and conditions.

1. DEFINITIONS

- 1.1 Agreement means these Terms and Conditions document together with the Quote and any other supplements designated below, exhibits, schedules or attachments.
- 1.2 Client means the recipient of the Services named in the Quote.
- 1.3 Client Content means all materials, information, photography, writings, the Client Trade Marks and other creative content provided by Client for use in the preparation of or incorporation in the Deliverables.
- 1.4 Client Default has the meaning set out in clause 5.2.
- 1.5 Client Trade Marks means trade names, words, symbols, designs, logos or other devices or designs used in the Final Deliverables to designate the origin or source of the goods or services of Client
- 1.6 Confidential Information has the meaning given in clause 7.
- 1.7 Deliverables means the services and work product specified in the Quote to be delivered by MWD to Client, in the form and media specified in the Quote.
- 1.8 Designer Tools means all design tools developed and/or utilized by MWD in performing the Services, including without limitation pre-existing and newly developed software including source code, Web authoring tools, type fonts, and application tools, together with any other software, or other inventions whether or not patentable, and general non-copyrightable concepts such as website design, architecture, layout, navigational and functional elements.
- 1.9 Final Art means all creative content developed or created by MWD, or commissioned by MWD, exclusively for the Project and incorporated into and delivered as part of the Final Deliverables, including but not limited to, any and all visual designs, visual elements, graphic design, illustration, photography, animation, sounds, typographic treatments and text, modifications to Client Content, and MWD's selection, arrangement and coordination of such elements together with Client Content and/or Third Party Materials.
- 1.10 Final Deliverables means the final versions of Deliverables provided by MWD and accepted by Client.
- 1.11 Intellectual Property Rights means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
- 1.12 Preliminary Works means all artwork including, but not limited to, concepts, sketches, visual presentations, or other alternate or preliminary designs and documents developed by MWD and which may or may not be shown and or delivered to Client for consideration but do not form part of the Final Art.
- 1.13 Project means the scope and purpose of the Client's identified usage of the work product as described in the Quote.
- 1.14 Quote means the quote delivered to the Client on [DATE]/ appended hereto.
- 1.15 Services means the Deliverables. Final Deliverables and Final Art to be provided to Client by MWD in relation to the Project as described and otherwise further defined in the Quote.
- 1.16 Third Party Materials means proprietary third party materials which are incorporated into the Final Deliverables, including without limitation stock photography or illustration.
- 1.16 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.17 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.18 A reference to writing or written includes email.

2. QUOTE

The terms of the Quote shall be effective for 30 days after presentation to Client. In the event this Agreement is not executed by Client within the time identified, the Quote, together with any related terms and conditions and Deliverables, may be subject to amendment, change or substitution.

3. FEES AND CHARGES

- 3.1 In consideration of the Services to be performed by MWD, Client shall pay to MWD fees set forth in the Quote.
- 3.2 Invoices. MWD shall invoice the Client [the total amount set out in the Quote upon completion of the Services for the Project. The Client shall pay all invoices within 30 days of receipt in full.
- 3.3 If the Client fails to make any payment due to MWD under this Agreement by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 4% per cent per annum above Barclay's Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment (Overdue Payment). The Client shall pay the interest together with the overdue amount.
- 3.4 All amounts payable by the Client under this Agreement are exclusive of amounts in respect of value added tax (VAT). Where any taxable supply of VAT purposes is made under this Agreement, the Client shall, on receipt of a valid VAT invoice from MWD, pay MWD such additional amounts in respect of VAT as are chargeable on the supply of the Deliverables at the same time as payment is due for the Deliverables.
- 3.5 If the Client fails to make an Overdue Payment within 90 days of receiving written notice, MWD may at its option:
 - (a) suspend the provision of the Deliverables until such Overdue Payment is satisfied; or
 - (b) pass the debt to a third party company for collection.
- 3.6 The Client shall pay all amounts due under this Agreement in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). MWD may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by MWD to the Client

4. CHANGES

- 4.1 General Changes. Unless otherwise provided in the Quote, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by Client which are outside the scope of the Services on a time and materials basis, at MWD's standard hourly rate of £60 per hour plus VAT. Such charges shall be in addition to all other amounts payable under the Quote, despite any maximum budget, contract price or final price identified therein. MWD may extend or modify any delivery schedule or deadlines in the Quote and Deliverables as may be required by such changes.
- 4.2 Testing and Acceptance. MWD will exercise commercially reasonable efforts to test Deliverables requiring testing and to make all necessary corrections prior to providing Deliverables to Client. Client, within five (5) business days of receipt of each Deliverable, shall notify MWD, in writing, of any failure of such Deliverable to comply with the specifications set forth in the Quote, or of any other objections, corrections, changes or amendments Client wishes made to such Deliverable. Any such written notice shall be sufficient to identify with clarity any objection, correction or change or amendment, and MWD will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes or amendments shall be subject to the terms and conditions of this Agreement. In the absence of such notice from Client, the Deliverables shall be deemed accepted.

5. CLIENT RESPONSIBILITIES

- 5.1 Client acknowledges that it shall be responsible for performing the following in a reasonable and timely manner:
 - (a) coordination of any decision-making with parties other than MWD;
 - (b) provision of Client Content in a form suitable for reproduction or incorporation into the Deliverables without further preparation, unless otherwise expressly provided in the Quote;
 - (c) giving written instructions to MWD in a clear, concise and prompt manner.

- (d) final proofreading and in the event that Client has approved Deliverables but errors for example, typographic errors or misspellings, remain in the finished product, Client shall incur the cost of correcting such errors.
 - (e) all artwork provided by MWD must be approved by the Client before committing to production e.g. print.
- 5.2 If MWD's performance of any of its obligations under this Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):
- (a) MWD shall without limiting its other rights or remedies have the right to suspend performance of the Deliverables until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays MWD's performance of any of its obligations;
 - (b) MWD shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from MWD's failure or delay to perform any of its obligations as set out in this clause 5.2; and
 - (c) the Client shall reimburse MWD on written demand for any costs or losses sustained or incurred by MWD arising directly or indirectly from the Client Default.

6. ACCREDITATION/PROMOTIONS

MWD retains the right, with written Client permission, to reproduce, publish and display the Final Art in MWD's portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purposes of recognition of creative excellence or professional advancement, and to be credited with authorship of the Final Art in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the Project and, if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

7. CONFIDENTIAL INFORMATION

Each party acknowledges that in connection with this Agreement it may receive certain confidential or proprietary technical and business information and materials of the other party, including without limitation Preliminary Works ("Confidential Information"). Each party, its agents and employees shall hold and maintain in strict confidence all Confidential Information, shall not disclose Confidential Information to any third party, and shall not use any Confidential Information except as may be necessary to perform its obligations under the Quote or as may be required by a court or governmental authority. Notwithstanding the foregoing, Confidential Information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

8. RELATIONSHIP OF THE PARTIES

- 8.1 Independent Contractor. MWD is an independent contractor, not an employee of the Client or any company affiliated with the Client. MWD shall provide the Deliverables under the general direction of the Client, but MWD shall determine, in MWD's sole discretion, the manner and means by which the Deliverables are accomplished. This Agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this Agreement. All rights, if any, granted to Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this Agreement
- 8.2 Subcontractors. MWD shall be permitted to engage and/or use third parties as independent contractors in connection with services outlined in the Quote. Notwithstanding, MWD shall remain fully responsible for such sub-contractors compliance with the various terms and conditions of this Agreement.
- 8.3 Non- Solicitation. During the term of this Agreement, and for a period of six (6) months after expiration or termination of this Agreement, Client agrees not to solicit, recruit, engage or otherwise employ or retain, on a full-time, part-time, consulting, work-for-hire or any other kind of basis, any MWD, employee or supplier of MWD, whether or not said person has been assigned to perform tasks under this Agreement. Unless express permission has been given in writing by MWD.

- 8.4 No Exclusivity. The parties expressly acknowledge that this Agreement does not create an exclusive relationship between the parties.

9. INTELLECTUAL PROPERTY

- 9.1 Any Intellectual Property Rights that vested in the respective parties at the date of this Agreement, shall remain their sole property and shall be the sole owner of all rights in connection therewith. In respect of the Client Content the Client hereby grants to MWD a nonexclusive, transferable license to use, reproduce, modify, display and publish the Client Content solely in connection with MWD's performance of the Services and limited promotional uses of the Deliverables as authorized in this Agreement.
- 9.2 All Third Party Materials are the exclusive property of their respective owners. MWD shall inform Client of all Third Party Materials that may be required to perform the Services or otherwise integrated into the Final Art. Under such circumstances MWD shall inform Client of any need to license, at Client's expense, and unless otherwise provided for by Client, Client shall obtain the license(s) necessary to permit Client's use of the Third Party Materials consistent with the usage rights granted herein. In the event Client fails to properly secure or otherwise arrange for any necessary licenses or instructs the use of Third Party Materials, Client hereby indemnifies, saves and holds harmless MWD from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of Client's failure to obtain copyright, trademark, publicity, privacy, defamation or other releases or permissions with respect to materials included in the Final Art.

10 WARRANTIES

- 10.1 The Client represents, warrants to MWD that (a) Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client Content, (b) to the best of Client's knowledge, the Client Content does not infringe the rights of any third party (including all Intellectual Property Rights), and use of the Client Content in connection with the Project and in accordance with the terms of this Agreement does not and will not violate the rights of any third parties, (c) Client shall comply with the terms and conditions of any licensing agreements which govern the use of Third Party Materials, and (d) Client shall comply with all laws and regulations as they relate to the Deliverables.
- 10.2 MWD warrants to the Client that it will provide the Services in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services.
- 10.3 Except for Third Party Materials and Client Content, the Final Deliverables shall be the original work of MWD and/or its independent contractors. In the event that the Final Deliverables include the work of independent contractors commissioned for the Project by MWD, MWD shall have written agreements from such independent contractors granting all necessary rights, title, and interest in and to the Final Deliverables to MWD.
- 10.4 To the best of MWD's knowledge and belief the Final Art provided by MWD and MWD's subcontractors does not infringe the rights of any party, and use of same in connection with the Project will not violate the rights of any third parties.
- 10.5 MWD shall have no liability to the Client in the event Client or third parties modify or otherwise use the Deliverables outside of the scope or for any purpose not identified in the Quote or this Agreement.
- 10.6 Except as contained in this Agreement, all other warranties are expressly excluded.

11. LIABILITY

Limitation of Liability. The services and the work product of MWD are sold "as is." In all circumstances, the maximum liability of MWD, its directors, officers, employees, agents and affiliates ("MWD parties"), to client for damages for any and all causes whatsoever, and client's maximum remedy, shall be limited to the Quote. In no event shall MWD be liable for any lost data or content, lost profits, business interruption or for any other indirect, incidental, special, or consequential damages, or any exemplary or punitive damages arising out of or relating to the Deliverables provided by MWD, even if MWD has been advised of the possibility of such damages.

12. TERM AND TERMINATION

- 12.1 This Agreement shall commence upon the Effective Date and shall remain effective until the last Deliverable has been completed and delivered.
- 12.2 This Agreement may be terminated at any time by either party effective immediately upon written notice if any party:
- (a) becomes insolvent, files a petition in bankruptcy, makes an assignment for the benefit of its creditors; or
 - (b) breaches any of its material responsibilities or obligations under this Agreement, which breach is not remedied within ten (10) days from receipt of written notice of such breach.
- 12.3 In the event of termination, MWD shall be compensated for the Services performed through to the date of termination in the amount of (a) any advance payment, (b) a prorated portion of the fees due, or (c) hourly fees for work performed by MWD or MWD's agents as of the date of termination, whichever is greater; and Client shall pay all expenses, fees, out of pockets together with any additional costs incurred through and up to, the date of termination.
- 12.4 In the event of termination by Client and upon full payment of any outstanding amounts due under this Agreement, MWD grants to Client such right and title as provided for in Schedule A of this Agreement with respect to those Deliverables provided to, and accepted by Client as of the date of termination.
- 12.5 Upon expiration or termination of this Agreement: (a) each party shall return or, at the disclosing party's request, destroy the Confidential Information of the other party, and (b) other than as provided herein, all rights and obligations of each party under this Agreement, exclusive of the Deliverables, shall survive.

13. GENERAL

- 13.1 Force majeure. Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 13.2 Assignment and other dealings. MWD may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.
- 13.3 The Client shall not, without the prior written consent of MWD, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under this Agreement.
- 13.4 Entire agreement. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 13.5 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

- 13.6 Variation. No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.7 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 13.8 Severance. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 13.9 Notices. Any notice or other communication given to a party under or in connection with this Agreement shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- (a) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.9; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one working day after transmission.
 - (b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.10 Third parties. No one other than a party to this Agreement shall have any right to enforce any of its terms. For the avoidance of doubt, the Client acknowledges that the Services are provided by MWD and it does not have any claim against any individuals.
- 13.11 Governing law. This Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 13.12 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.



Matt Willatt Design Ltd

Office: 01223 370 026 | www.mattwillatt.co.uk | design@mattwillatt.co.uk

Matt Willatt Design Ltd, Sheraton House, Castle Park, Cambridge, CB3 0AX

Company number: 09323948 Registered in England and Wales