

# Grey Matter Design & Marketing Communications

## Standard Terms & Conditions of Contract

Grey Matter Design & Marketing Communications – Here referred to as ‘the designer’

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We know this small print looks rather tedious, but we would encourage you to read on as these professional terms form the basis of what we hope will be a mutually profitable and agreeable relationship.

### **1. Price variation.**

Estimates are based on the designers’ current costs of production and, unless otherwise agreed, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs. Current rate for all creative and studio services is £100.00 per hour - £800.00 per day or any part thereof.

### **2. Tax.**

Except in the case of a customer who is not contracting in the course of a business nor holding himself out as doing so, the designer reserves the right to charge the amount of any value added tax payable whether or not included on the estimate or invoice.

### **3. Preliminary work.**

All work carried out, whether experimentally or otherwise, at customer’s request shall be charged.

### **4. Copy.**

A charge may be made to cover any additional work involved where copy supplied is not clear and legible.

### **5. Proofs.**

Proofs of all work may be submitted for customer’s approval and the designer shall incur no liability for any errors not corrected by the customer in proofs so submitted. Customer’s alterations and additional proofs necessitated thereby shall be charged extra. When style, type or layout is left to the designers judgment, changes therefrom made by the customer shall be charged extra.

### **6. Delivery and payment.**

(a) Delivery of work shall be accepted when tendered and thereupon or, if earlier, on notification that the work has been completed the ownership shall pass on payment in full.

(b) Unless otherwise specified the price quoted is for delivery of the work to the customer’s address as set out in the estimate. A charge may be made to cover any extra costs involved for delivery to a different address.

(c) Should expedited delivery be agreed an extra may be charged to cover any overtime or any other additional costs involved.

(d) Should work be suspended at the request of or delayed through any default of the customer the designer shall then be entitled to immediate payment for work already carried out, materials specially ordered and other additional costs including storage.

#### **7. Variations in quantity.**

In printed matter, every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5 per cent for work in one colour only and 10 per cent for other work being allowed for overs or shortage (4 per cent and 8 per cent respectively for quantities exceeding 50,000) the same to be charged or deducted.

#### **8. Claims - damage, delay or partial loss of goods.**

Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to the designer and the carrier within three clear days of delivery (or, in the case of non-delivery, within 14 days of despatch of the goods) and any claim in respect thereof must be made in writing to the designer and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 28 days of despatch). All other claims must be made in writing to the designer within 14 days of delivery.

#### **9. Liability.**

The designer shall not be liable for any consequential loss to the customer arising from any advice given, designs, works or materials supplied, services rendered or delay.

#### **10. Graphics and materials**

(a) Metal, film, glass, graphics, panels, paper, artwork and other materials owned by the designer and used by him in the production of type, plates, moulds, stereotypes, electrotypes, film-setting, negatives, positives, photographic images, displays and the like shall remain his exclusive property. Such items when supplied by the customer shall remain the customer's property.

(b) Copyright, Intellectual Property Right will remain with the designer until paid for in full.

(c) Type may be distributed and lithographic, photogravure, stored CD images and artwork or other work effaced immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, rent for storage may be charged.

#### **11. Customer's property.**

(a) Except in the case of a customer who is not contracting in the course of a business nor holding himself out as doing so, customer's property and all property supplied to the designer by or on behalf of the customer shall while it is in the possession of the designer or in transit to or from the customer be deemed to be at customer's risk unless otherwise agreed and the customer should insure accordingly.

(b) The designer shall be entitled to make a reasonable charge for the storage of any customer's property left with the designer before receipt of the order or after notification to the customer of completion of the work.

#### **12. Materials supplied by the customer.**

(a) The designer may reject any paper, plates or other materials supplied or specified by the customer, which appear to him to be unsuitable. Additional cost incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by

the designer in ascertaining the unsuitability of the materials then that amount shall not be charged to the customer.

(b) Where materials are so supplied or specified, the designer will take every care to secure the best results, but responsibility will not be accepted for imperfect work caused by defects in or unsuitability of materials so supplied or specified.

(c) Quantities of materials supplied shall be adequate to cover normal spoilage.

### **13. Insolvency.**

If the customer ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding-up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, the designer without prejudice to other remedies shall

(i) have the right not to proceed further with the contract or any other work for the customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the customer, such charge to be an immediate debt due to him, and (ii) in respect of all unpaid debts due from the customer have a general lien on all goods and property in his possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such manner and at such price as he thinks fit and to apply the proceeds towards such debts.

### **14. Illegal matter.**

(a) The designer shall not be required to print or publish any matter, which in his opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.

(b) The designer shall be indemnified by the customer in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent, design or of any other proprietary or personal rights contained in any material printed for the customer. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

### **15. Periodical publications.**

A contract for the printing of a periodical publication may not be terminated by either party unless 13 weeks notice in writing is given in the case of periodicals produced monthly or more frequently or 26 weeks notice in writing is given in the case of other periodicals. Notice may be given at any time but wherever possible should be given after completion of work on any one issue. Nevertheless the designer may terminate any such contract forthwith should any sum due thereunder remain unpaid.

### **16. Force majeure.**

The designer shall be under no liability if he shall be unable to carry out any provision of the contract for any reason beyond his control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the customer may by written notice to the designer elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

## **17. Law.**

These conditions and all other express terms of the contract shall be governed and construed in accordance with the laws of England.

## **18. Title**

(a) Title to the finished goods (i.e. printed matter, literature, panels etc.) shall not pass to the Purchaser until payment in full of the price therefore. In circumstances where goods are delivered to the purchaser prior to payment being made and until such payment the Purchaser shall only have possession of the Goods as bailee for the Seller and shall store the Goods in such a way as to enable them to be identified as the property of the Seller provided that if the Purchaser is purchasing the Goods for resale the Purchaser may as agent for the Seller sell and deliver the Goods to a third party in the ordinary course of the Purchaser's business on condition that until such payment as aforesaid the Purchaser shall hold all proceeds of such sales in trust for the Seller and in a separate account. The Purchaser hereby assigns to the Seller all rights and claims which the Purchaser may have against its customers arising from such sales until payment is made in full as aforesaid.

(b) The Seller reserves the right to re-possess any goods in respect of which payment is overdue and thereafter to resell the same and for this purpose the Purchaser hereby grants an irrevocable right and licence to the Seller's servants and agents to enter upon all or any of its premises with or without vehicles during normal termination of the Contract of any reason and is without prejudice to any accrued rights of the Seller thereunder or otherwise.

## **19. Web Design & Hosting**

For customers with credit accounts, all payments are due on 30 days. If we do not receive payment on the appropriate date, then the account will be deemed as 'overdue' and will be automatically suspended. After a total of 15 days after initial suspension, the hosting account and all associated data may be removed from our server and deleted. Accounts that are not collectable by the designer may be turned over for collection to an outside agency whose fees will be in addition to any already occurred by the customer. The company may temporarily deny service or terminate this agreement upon failure of subscriber to pay charges when due. Such termination or denial of service will not relieve Subscriber of responsibility for the payment of all accrued charges, plus reasonable interest and any collection fees.

## **20. Refund and Disputes**

All payments to the designer are non-refundable: this includes any setup fees or any subsequent charges regardless of usage. All billing disputes must be reported within 14 days of the time the dispute occurred. All service or web hosting accounts provided by the designer begin at the time payment is received by the designer (in the case of cheque payments, service provision commences once the cheque is classed as 'cleared' by the designers bank). Therefore, the customers' right to cancel and receive a refund will not apply once service provision has begun.

## **21. Suspension of Service or Cancellation**

The designer reserves the right to suspend services (including Web and hosting services, PR services etc.) to any customer if in the judgment of the company the customer's account is the source or target of a violation of any of the other terms of business or for any other reason which the designer chooses. If inappropriate activity is detected, all accounts of the Customer in question will be deactivated until an investigation is

complete. Prior notification to the customer is not assured. The customer will not be credited for the time the customer's accounts were suspended.

## **22. Credit accounts and terms**

A customer wishing to open a credit account should so apply before placing his order. The designer reserves the right to make such enquiries as he sees fit to establish the credit worthiness of such an applicant. Where a credit account is allowed, unless otherwise agreed in writing, a first payment is due before commencement of any project. In the case of protracted discussions, or delays caused by the client, or phased work, it is customary for the designer to periodically tender invoices to cover 'work to date' or as an advance towards external costs incurred on the customers' behalf. All subsequent payments are due within 30 days of the date of invoice. The customer can terminate work at any stage and invoices will be presented accounting for work undertaken to date of termination. Interest on overdue accounts will be charged at a rate of 2½% per month. Waiver of this condition or any part thereof shall be at the sole discretion of the designer.

## **23. Late Payments**

Should Client fail to pay any fees on the date due for payments, Grey Matter shall have the right to make use of any or all of the following:

- a.) Assess and collect charges for the delay in an amount constituting 2.5 percent per month of which amount shall not exceed the ceiling provided by law, when available,
- b.) Suspend or terminate any access to any or all of the services of Grey Matter.
- c.) Terminate the herein Agreement without incurring any liability whatsoever arising from the discontinuance of services due to late payments.
- d.) The suspension or termination of Grey Matter services, or of the Agreement, shall not absolve the client from paying any outstanding fees, interests and penalties. Client shall be responsible for any costs for the collection of such fees. Costs herein contemplated shall include, among other expenses rightfully due to Grey Matter lawyer fees, expenses of litigation, and payment of damages.

## **24. Termination**

Grey Matter may terminate this agreement and your access to any or all Grey Matter related services at any time, with or without cause, effective immediately, and without any refund of any kind, including but not limited to refunds for pre-paid services. Grey Matter shall have no responsibility to notify any third-party providers of services, merchandise or information, nor any responsibility for any consequences resulting from such discontinuance or lack of notification. Any outstanding amount due on the account will still be payable.

You may terminate this Agreement at any time by contacting the support department at Grey Matter. No refund shall be issued. Grey Matter must receive all completed and correct termination requests, in writing, at least 30 days in advance of contract renewal date. All work related to the Account to be cancelled must be paid in full at the time of cancellation.

All plans automatically renew every period, unless cancellation is requested in writing at least 30 days before renewal time.

## **25. Relationship Of The Parties**

Nothing contained in this Agreement shall be construed as creating any agency, legal representative, partnership or other form of joint enterprise between the parties. Neither party shall have authority to contract for or bind the other in any manner whatsoever.

## **26. Disclaimer Of Warranties/Limitation Of Liability**

The Grey Matter service provided is provided on an "as is", "as available" basis without warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability, fitness for a particular purpose or non-infringement. Grey Matter expressly disclaims any representation or warranty that the Grey Matter service will be error-free, timely, secure or uninterrupted. No oral advice or written information given by Grey Matter its employees, licensors or agents will create a warranty; nor may you rely on any such information or advice.

Under no circumstances, including negligence, will Grey Matter or its affiliates be liable for any direct, indirect, incidental, special or consequential damages that result from the use of or inability to use the Grey Matter service, including but not limited to reliance on any information obtained on the grey matter service; or that result from mistakes, omissions, interruptions, deletion of files or e-mail, loss of or damage to data, errors, defects, viruses, delays in operation, or transmission, or any failure of performance, whether or not limited to acts of god, communication failure, theft, destruction or unauthorized access to Grey Matter records, programs or services. You hereby acknowledge that this provision will apply whether or not grey matter is given notice of the possibility of such damages and that this provision will apply to all services available from grey matter and its affiliates.

Under no circumstances, under the terms of this agreement, shall damages include loss of business or loss of profits whether based on breach of agreement, breach of warranty, tort, product liability or otherwise.

The terms of this section shall survive the termination of this agreement for whatever reason.

## **27. Copyright And Trademarks**

All contents of the Grey Matter website are proprietary to Grey Matter and/or its suppliers and are protected under copyright law. All rights are reserved. Grey Matter reserves any rights not expressly granted herein.

## **28. Force Majeure**

If by reason of failure of telecommunications or Internet service providers, labour disputes, riots, inability to obtain labour or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions or other causes beyond the control of Grey Matter, Grey Matter is unable to perform in whole or in part its obligations as set forth in this Agreement, then Grey Matter shall be relieved of those obligations to the extent it is so unable to perform, and such inability to perform shall not make Grey Matter liable to the user.

## **29. SEO (Search Engine Optimisation) Services**

Client acknowledges the following with respect to services:

- Grey Matter has no control over the policies of search engines with respect to the type of sites and/or content that they accept now or in the future. Client site may be excluded from any directory at any time at the sole discretion of the search

engine or directory. Grey Matter will resubmit those pages that have been dropped from the index.)

- Due to the competitiveness of some keywords/phrases, on-going changes in search engine ranking algorithms and other competitive factors, Grey Matter does not guarantee #1 positions or consistent top positions for any particular keyword, phrase or search term. Some search engines and directories may take as long as 2 to 4 months, and in some cases longer, after submission to list your site. 6 months is our minimum recommended contract period and the client should not expect to see rankings of any kind until after this period.
- Occasionally, search engines will stop accepting submissions for an indefinite period of time.
- Occasionally, search engines will drop listings for no apparent or predictable reason. Often listing will “reappear” without any additional submissions. Should the listing not reappear, Grey Matter will re-submit the site based on the current policies of the search engine in question.
- Some search directories offer expedited listing services for a fee. Grey Matter encourages clients to take advantage of these expedited services. Client is responsible for expedited service fees, example Yahoo, unless otherwise noted in the package Client purchases.

### **30. Website Changes**

Grey Matter is not responsible for changes made to the Web site by other parties that adversely affect the performance or search engine rankings of the Client’s Web site. Additional Services not listed herein or in our Proposal can be provided for £100 per hour. For example, purchasing keywords beyond the scope provided in the SEO proposal, or creating more doorway pages than provided in original Proposal.