



Terms & Conditions

Issued by and on behalf of Distraction Agency Limited. These Terms and Conditions apply to technical support, web design, 3D design, graphic design and other design work and related services including but not limited to photography and copywriting.

DEFINITIONS

Terms	Definition
Agreed Specification	The detail of the Material as agreed between Distraction and Client.
Approval Period	Period between notification by Distraction to the client that the work has been completed and the deadline for the client to raise points regarding the work. Default period of 7 days (5 working days), unless Otherwise Agreed.
Capital Total	Cost of any capital equipment being purchased for the contract. Payment will be made in advance. Full title to the capital equipment will reside with the client.
Client	You.
Distraction	Distraction Agency Limited.
Design Total	Cost of creative work undertaken by Distraction. This cost includes materials, consumables, expenses and other associated costs, unless specifically quoted as a separate item on the official quotation.
Estimate	An approximate price or cost for work to provide a working indication of likely final price or cost. An estimate is never considered to be a fixed price or cost unless specified as a Quote.
Otherwise Agreed	Variances in the terms and conditions may be Otherwise Agreed in writing by Distraction They may not be agreed verbally.
Quote	A fixed price or cost provided in writing. Distraction will not charge more than this unless the Agreed Specification changes.
Software Total	Cost of any software being purchased on behalf of the client. Payment will be made in advance unless Otherwise Agreed. Full title to the software will reside with the client.
You	The client.
Material	All work generated including but not limited to text, logos, data, files, photos, graphics, products, rapid-prototypes.
The Work	The item of work for which Distraction has been contracted.
Third-Party	Any organisation, or individual, singular or otherwise not Distraction or the Client.
We	Distraction Limited.



1. Acceptance

A copy of these terms and conditions must be signed by all new clients prior to or at the time of submission of work to us, indicating agreement to and acceptance of these Terms and Conditions. The terms and conditions listed apply to all material which we undertake for our clients unless, by exception, variance is Otherwise Agreed in writing. The issuing of instructions following receipt of these terms of business by a client or first payment by the client will constitute acceptance.

FINANCIAL

2. Charges

Charges for services to be provided by us are defined in the project estimate where provided. Payment is required in stages:

- 100% of the Capital Total as an advance payment.
- 50% of the Print Total as an advance payment.
- 100% of the Software Total as an advance payment.
- 40% of the Design Total as an advance payment.
- 100% of the remaining Design Total on completion of work.

Payment methods for services accepted: Cheque or Direct Bank Payment. Funds must clear before they are considered to be paid.

3. Price variation

Estimates are based on Distraction's current costs and, unless otherwise agreed, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs. All prices or costs sent in writing by Distraction to the client are considered estimates unless otherwise specified. All prices or costs provided by Distraction to the client in any other form are considered estimates unless otherwise specified in writing.

4. Payment

We will provide an invoice to cover the deposit by return of post when the cheque has cleared. We will provide an invoice to cover the final payment for the website design and any associated services upon completion of the work. Payment of invoices shall unless Otherwise Agreed be made in full without any deduction or set-off on demand. If payment is not received within thirty days, the responsibility for recovery of the money will be transferred to a debt recovery agency. We understand and will exercise our statutory right to interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms. Late Payment of Commercial Debts (Interest) Act 1998.

5. Tax

Distraction reserves the right to charge the amount of any value added tax payable whether or not included on the estimate or invoice.

6. Default

Accounts unpaid 7 days after the date of invoice will be considered in default. We will, at our discretion, remove any website files from our web server and will not be held responsible for any loss of data incurred. Removal of such material does not relieve you of the obligation to pay any outstanding charges. We will retain, or reclaim any printed or otherwise constructed items which may have been passed to the Client or any third party. Retention or reclamation of such items does not relieve you of the obligation to pay any outstanding charges.

Cheques returned by the bank as unpaid for any reason will attract a "returned cheque" charge of £25 and bank costs, your account will immediately be considered to be in default until full payment is received. Clients with accounts in default agree to pay us reasonable expenses incurred by us in enforcing these Terms and Conditions, including but not limited to legal fees and costs for collection by third-party agencies.

Interest shall be payable by the Client on overdue accounts at the rate of 8% over Bank of England base rate to run from the due date for payment thereof until receipt by the Company of the full amount whether before or after judgement.

7. Insolvency

If the client 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 against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, Distraction without prejudice to other remedies shall: i. have the right not to proceed further with the contract or any other work for the client and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the client, such charge to be an immediate debt due to him, and ii. in respect of all unpaid debts due from the client 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.

WORK

8. Preliminary work

All work carried out, whether experimentally or otherwise, at the client's request shall be charged. 9. Minimum charge There is a minimum charge of half an hour for any work undertaken by Distraction. 10. Client Review and Approval Distraction will provide you with an opportunity to review the appearance and content of the work during the design period and on completion. On completion of the project, the work will be deemed to be accepted and approved unless you notify us otherwise within the Approval Period.



11. Termination

Termination of services by you must be requested in writing and will be effective on receipt of such notice. Email or telephone requests for termination of services will not be honoured until and unless confirmed in writing. You will be invoiced for design work completed to the date of first written notice of cancellation for payment in full within 7 days and the terms laid out above will apply. Capital Total, Software Total costs and advance payments are non-refundable, title for work done remains with Distraction.

12. Project Material

Unless otherwise specified in the project quotation, any text copy will be provided by you in suitable electronic format suitable for reading with PC's, by email, floppy disk or CD, and all photographs and other graphics will be provided physically in high quality print suitable for scanning or electronically in gif, jpeg, psd, eps or tiff format. Although we will make every reasonable attempt to return to you any images or printed material provided, this cannot be guaranteed.

13. Materials supplied by the Client

The quality of any material provided by the client is the responsibility of the client. Distraction does not warrant the quality of any third-party or client material. A charge may be made to cover any additional work involved where copy supplied is not clear and legible or if digital information requires additional work to utilise. Responsibility will not be accepted for imperfect work caused by defects or unsuitability of materials supplied or specified by the client.

14. Proofs & Drafts

All work may be submitted for client's approval and Distraction shall incur no liability for any errors not corrected by the client in works so submitted. Client's alterations and additional proofs necessitated thereby shall be charged extra. When content, style, type or layout is left to Distraction's judgement, changes therefrom made by the client shall be charged extra. No responsibility will be accepted for differences between proofs and work supplied to the client where the methods of production differ.

15. Copyright

You retain the copyright to data, files and logos provided by you and grant us the right to publish and use such material. You must obtain permission and rights to use any information or files that are copyrighted by a third party. You are further responsible for granting us permission and right to use the same and agree to indemnify and hold us harmless from any and all claims resulting from any negligence on your part or your inability to obtain proper copyright permission. A contract for website design and/or publication shall be regarded as a guarantee by you to us that all such permissions and authorities have been obtained, regardless of whether or not we have had sight of documents granting such permission and authority.

All material created by Distraction remains copyright Distraction. The client purchases the right to use such material for the sole purpose of the work contracted. The material may not be used by the client for any other purpose without agreement from and payment to Distraction. Any third-party material agreed by the client will remain copyright of the third-party. Any fees or other associated costs are payable by the client directly to the third-party unless Otherwise Agreed.

16. Alterations by Client or Third-Party

Distraction does not accept responsibility for any alterations carried out by you or any third party to the work at any time.

17. Standing Material

Metal, film, glass and other materials owned by Distraction and used by us in the production of proofs, plates, negatives, positives and the like shall remain our exclusive property. Such items when supplied by the customer shall remain the customer's property.

18. Client's Property

Client's property and all property supplied to Distraction by or on behalf of the client shall while it is in the possession of Distraction or in transit to or from the client be deemed to be at the client's risk unless Otherwise Agreed and the client should insure accordingly.

19. Access Requirements

The client agrees to offer all support, practical assistance and information required by Distraction to gain access (physical, electronic or otherwise) as appropriate for creation of the work. This includes but is not limited to web servers, files, data, physical premises, (e.g. for photo shoots), thirdparty resources.

20. Design Credit

Websites: a link to the Distraction website <http://www.distracts.co.uk> with the wording "design: Distraction" (or equivalent) or, if the site is to be hosted by us, "Designed and hosted by Distraction" will appear in either small type or by a small graphic at the bottom or to one side of your website. Printed Material: a design credit will be included in an appropriate place such that it does not affect the integrity of the product, but allows the user to see who designed the material. Other Material: a design credit will be included where appropriate.



21. Delivery and Payment

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 and payment shall become due. A charge may be made to cover costs involved for delivery. Should expedited delivery be agreed an extra may be charged to cover any overtime or any other additional costs involved. Should work be suspended at the request of or delayed through any default of the client for a period of 30 days Distraction shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

22. Claims

Advice of damage, dissatisfaction of condition, delay or partial loss of goods in transit or of non-delivery, must be given in writing to Distraction and the carrier within three clear days of delivery. (In the case of non-delivery, within 28 days of dispatch of the goods). All other claims must be made in writing to Distraction within 7 days (5 working days) of delivery. Distraction shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the client proves that it was not possible to comply with the requirements.

23. Variations in Quantity

Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional.

TECHNICAL SUPPORT

24. Timely Manner

Distraction will make reasonable efforts to provide technical support and to resolve any problems within a timely manner.

25. Charges

Distraction will charge for all technical support on the basis of hours and costs. A standard hourly rate as agreed with the Client will be charged for all time spent working on matters relating to the Client. Any additional costs or expenses arising as a result of the work carried out will be passed onto the Client.

OTHER

26. Governing Law

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

27. Liability

Distraction shall not be liable in any way whatsoever for:

- Any damage of any kind (direct, indirect, consequential, incidental or punitive) which results from the use of, access to or inability to use the material, or any information contained in any material which it has designed.
- Any damage of any kind (direct, indirect, consequential, incidental or punitive) which results from the use of, access to or inability to use hardware, software or other goods recommended, installed, supported, maintained by Distraction.
- Any errors or omissions in the contents of any material which it has designed, or any advice given, or support work carried out.
- Any damages to or viruses that may infect a site visitor's computer equipment, software, data or other property which result from a site visitor's access to, use of or browsing in any website designed by Distraction.
- Any damages which result from the downloading of material, data, text, images, video or audio from any website designed by Distraction.
- Any content in any website linked to a website designed by Distraction and any resulting damages from a website visitor's access to any such linked site – website visitors link to any other such websites at their own risk.
- Each individual web site owner reserves the exclusive right to alter its site content in any way, at any time and for any reason without prior notification carrying no liability for any consequences of such changes. Should Distraction work to any directive from a site owner to change the site content then such work is undertaken on the clear understanding that no liability whatsoever relating to such changes is assigned to Distraction.
- Distraction will not be responsible for any damages arising from or relating to the use of any material created by or any goods or services provided by Distraction including web hosting and internet marketing services or obtained in any manner through or in connection with any material. Distraction makes no warranties of any kind, expressed or implied for the services it provides.
- Distraction disclaims any warranty or merchantability or fitness for a particular purpose. Without limiting the foregoing, Distraction shall not be liable for loss of data resulting from delays, non delivery, wrong delivery, work stoppage, computer, hardware or software failure or malfunction or any and all service interruptions caused directly or indirectly by Distraction.
- Distraction shall not be liable to any business for any incidental, consequential, special, or punitive damages or lost or imputed profits or royalties arising out of this agreement or any goods, advice or services provided, whether liability is asserted in contract or tort (including negligence and strict product liability) and irrespective of whether advice has been given of the possibility of any such loss or damage.
- In no event will Distraction be liable for any damages in excess of any monies received by Distraction from the Client.



28. Illegal Matter

Distraction shall be indemnified by the client 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 produced or hosted for the client. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

29. Force Majeure

Distraction 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 client may pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

30. General

These Terms and Conditions supersede all previous representations, understandings or agreements. Your signature accepting a quotation, verbal agreement to proceed or payment of an advance fee constitutes agreement to and acceptance of these Terms and Conditions. Distraction reserves the right to revise its terms, conditions and charges at any time and without prior notice.