

# Reid Design Ltd Terms and Conditions for Supply of Design Services and Creative Product

## 1. Definitions

- 1.1 In these Conditions, unless the context requires otherwise:
- (a) **Client** means the person who engages RDL to provide Design Services.
  - (b) **Completion Date** means the date specified by RDL when a Project Order will be completed.
  - (c) **Conditions** means these Terms and Conditions and any special Terms and Conditions agreed in writing by RDL.
  - (d) **Creative Product** means tangible or physical product which RDL may supply as part of its Design Services, which shall include but not necessarily be limited to print media or packaging.
  - (e) **Designs** means designs, logos, artwork, Website Design and other creative work which is non Creative Product, produced by RDL pursuant to a Project Order.
  - (f) **Design Services** means the design services which RDL supplies to the Client pursuant to these Conditions.
  - (g) **Hosting Services** means the service whereby the Client's website is hosted on RDL's servers or on the servers of a third party provider contracted through RDL.
  - (h) **Photographs** means photographs which are taken or acquired by RDL as part of its Design Services to the Client.
  - (i) **Project** means the Design Services / Creative Product which derives from a Project Order.
  - (j) **Project Order** means a request (either verbal or in writing) by the Client for RDL to supply Design Services / Creative Product and includes specifications and project briefs whether prepared by RDL or the Client.
  - (k) **Price** means the price for the Design Services and/or Creative Product excluding GST which shall be charged separately.
  - (l) **RDL** means Reid Design Limited and any other associated, related or subsidiary companies which supply Design or Hosting Services to the Client.
  - (m) **Support Services** means services supplied by RDL to support, update, amend, and maintain a Website.
  - (n) **Website** means a website developed by RDL for the Client and includes the source code, functionality, content management platform, Designs and Photographs incorporated into the Website.
  - (o) **Website Design** means all parts of a Website but excluding the source code, content management platform and the functionality which derives from the source code.

## 2. Conditions Applicable

- 2.1 These Conditions shall apply to all Project Orders, Design Services and Hosting Services to the exclusion of all other terms and conditions, including any terms and conditions which the Client may purport to apply under any purchase order, confirmation of order or similar document
- 2.2 All Project Orders shall be deemed to be an offer by the Client to engage RDL pursuant to these Conditions.
- 2.3 Providing the Client has been sent these Conditions in advance, acceptance of delivery of Creative Product or the commencement of work by RDL pursuant to a Project Order shall be deemed conclusive evidence of the Client's acceptance of these Conditions.
- 2.4 Any variation to these conditions (including any special Terms and Conditions agreed between the

parties) shall be inapplicable unless agreed in writing by RDL.

## 3. Project Orders

- 3.1 The Client shall use its best endeavours to ensure that any Project Orders are sufficiently detailed and specific to allow RDL to complete such Project Orders to the satisfaction of the Client.
- 3.2 Each Project Order shall constitute a separate contract between RDL and the Client subject to these Terms.
- 3.3 The Client shall appoint a representative ("Client Representative") to act as the principal point of contact between the parties who shall be responsible for ensuring adequate and timely instructions or assistance is provided to RDL.
- 3.4 RDL may produce proofs at various stages of the project or seek instructions from the Client before continuing with the Project. It shall be the Client Representative's responsibility to carefully check and sign such proofs or provide timely instructions before RDL is obliged to move to the next stage of the Project. Any failure by the Client Representative to sign a proof or provide instructions shall not affect the Price payable and RDL shall not be liable for any errors in a Project where the completed Project corresponds with a proof signed by the Client or instructions given by the Client.
- 3.5 Any variations to a Project Order shall not be valid unless set out in writing by the Client Representative.
- 3.6 Additional charges may be levied for any variations to the original Project Order on a time and materials basis in accordance with RDL's current price list.

## 4. Intellectual Property

- 4.1 The source code, content management platform, and functionality of any Website developed by RDL will remain the intellectual property of RDL or its licensor with a royalty free perpetual licence to the Client to use it for the Website.
- 4.2 Copyright in any Designs, Photographs taken by RDL or Website Design will pass to the Client on payment of the Price.
- 4.3 Where RDL is a licensee of Photographs the licence owned by RDL will pass to the Client on payment of the Price.
- 4.4 The Client shall ensure that any material provided to RDL for inclusion into a Website or Creative Product does not infringe any 3<sup>rd</sup> party intellectual property right, is not offensive or in breach of any law or statute.

## **5. Hosting Services**

- 5.1 Where RDL hosts a Client Website, RDL shall invoice the Client for hosting fees at the price quoted.
- 5.2 Payment for hosting fees must be made within 14 days of invoice.
- 5.3 Where a Client fails to pay hosting fees by the due date RDL shall provide one reminder of 14 days to pay otherwise RDL shall terminate the hosting service without liability to the Client for any consequential financial loss it may suffer.
- 5.4 RDL may increase the hosting fees by giving 28 days' notice to the Client.
- 5.5 The Client may terminate the Hosting Services by giving RDL 28 days' notice in writing. Providing that due notice is given, RDL shall assist to transfer the Website to the new host. RDL may charge the Client for its time in transferring the Website to another host, such fees to be paid prior to RDL's transferring the Website.

## **6. Support Services**

- 6.1 Support Services shall be charged on a time and materials basis in accordance with RDL's published price list.
- 6.2 An agreement for ongoing Support Services may be terminated by the Client by giving 28 days' written notice to RDL.
- 6.3 Whilst RDL will use its reasonable endeavours to respond to Support Services requests in a timely manner, the ability of RDL to supply Support Services is dictated by the availability of personnel and resources. RDL gives no warranty that it will supply Support Services within a particular timescale and shall not be liable for any loss suffered by the Client in the event of a delay in providing Support Services.

## **7. Price as per price list or quotation**

- 7.1 The Price shall be calculated in accordance with RDL's published price list current at the date of performance of the Design Services or delivery of the Creative Product. The Price is exclusive of GST, which shall be due at the rate ruling on the date of the GST invoice. Where applicable delivery or third party licensing fees may be charged in addition to the Price.
- 7.2 Where a quotation is provided it will only be valid for the time period specified on the quotation. Written estimates are not to be regarded as quotations.
- 7.3 Any change to a Project Order of whatever nature after a quotation has been given invalidates that quotation.

## **8. Payment**

- 8.1 Payment of the Price and GST shall be due on the date stated in RDL's invoice to the Client.

- 8.2 RDL may require payment of a deposit or staged payments at significant milestones during the Project. RDL is under no obligation to commence or continue with a Project until such deposits or staged payments are paid. All deposits are non refundable.
- 8.3 Payment may be made by cash or direct credit.
- 8.4 Time for payment shall be of the essence.
- 8.5 Unless an invoice contains a manifest error, all invoices are deemed accepted by the Client 5 days after delivery to the Client.
- 8.6 The Client may not withhold payment of any invoice or other amount due to RDL by reason of any right of set off or counterclaim which the Client may have, or allege to have, or for any reason whatever.

## **9. Insolvency**

- 9.1 Where:
  - (a) the Client fails to make payment of the Price; or
  - (b) commits any other breach of these Conditions;
  - (c) the Client offers to make any arrangement with its creditors;
  - (d) any bankruptcy / winding up petition is presented against the Client;
  - (e) the Client is unable to pay its debts as they fall due;
  - (f) if being a Limited Company any resolution or petition to wind up the Client (other than for the purposes of amalgamation or reconstruction without insolvency) shall be passed or presented;
  - (g) a receiver, administrator, administrative receiver, or manager shall be appointed over the whole or any part of the Client's business or assets;
  - (h) the Client shall suffer any analogous proceedings under foreign law;then all sums outstanding in respect of all Project Orders shall become payable immediately.
- 9.2 In addition, RDL may, in its absolute discretion, and without prejudice to any other rights it may have:
  - (a) Suspend all future supply of Design and / or Hosting and / or Support Services to the Client; and/or
  - (b) Terminate all Project Orders without liability on its part; and/or
  - (c) Charge interest at the rate of 2.5% per month on all sums outstanding; and/or
  - (d) Charge any collection costs incurred.

## **10. Time for performance**

- 10.1 Whilst RDL will use its reasonable endeavours to ensure completion of any Project by the Completion Date and achievement of agreed milestones by the dates agreed, having regard to the availability of personnel, supplies, facilities and commitments to other clients, any dates quoted for the commencement or completion of a Project are estimates only and time shall not be of the essence.
- 10.2 Delivery of Creative Product shall be made to the Client's address on the Delivery Date. Creative Product may be delivered in advance of the Completion Date upon the giving of reasonable notice to the Client. The Client shall make all arrangements to take delivery of the Creative Product whenever it is tendered for delivery.
- 10.3 Creative Product shall be at the Client's risk from delivery.

10.4 RDL shall not be liable to the Client for late delivery or short delivery of the Creative Product.

10.5 RDL may sub contract any part of the supply of Design Services.

## 11. Acceptance and rejection

11.1 The Client shall be deemed with acceptance of the Creative Product 48 hours after delivery to the Client.

11.2 In respect of Designs, Photographs, and Websites the Client shall be deemed to have accepted such Designs, Photographs, and Websites 7 days after completion of the Project or completion of any completed milestone.

11.3 After acceptance, the Client shall not be entitled to reject any Project which is not in accordance with the Project Order.

11.4 Where the Client rejects any Project then the Client shall have no further rights whatever in respect of the supply to the Client of such Project or a failure by RDL to supply Creative Product, Designs, Photographs, or Website which conform with the Project Order.

11.5 When the Client accepts, or has been deemed to have accepted any Project, then RDL shall have no liability whatever to the Client in respect of that Project.

## 12. Warranties and Liability

12.1 RDL warrants that:

- (a) Creative Product supplied will, at the time of delivery, correspond to the proof signed by the Client and will be fit for the purpose specified in the Project Order;
- (b) Design Services supplied will be performed by competent persons and will be carried out with reasonable care and skill;
- (c) Design Services supplied shall not infringe any third party intellectual property rights;
- (d) Websites supplied will function in accordance with the Project Order save that no warranty is given that the functions will perform in the same manner on the Client's equipment or on all browsers.
- (e) Hosting Services shall include reasonable redundancy to safeguard against loss of data in the event that a server crashes or is corrupted. However, RDL gives no warranty against loss or corruption of data and the Client is recommended to ensure it keeps a back-up.
- (f) Hosting Services shall provide reasonable protection against hackers but no warranty is given that data stored shall be completely secure.

12.2 The conditions, warranties and guarantees set out in the Sale of Goods Act 1908, Consumer Guarantees Act 1993 or implied by common law are excluded from these Terms to the fullest extent permitted by law.

12.3 RDL shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RDL of these Conditions or its own negligence.

12.4 In the event of any breach of these Conditions by RDL or its own negligence, the remedies of the Client

shall be limited to damages and under no circumstances shall exceed the Price.

12.5 The Client shall indemnify RDL for all loss or damage arising by reason of the negligence of the Client, its employees or contractors, or any breach by the Client of these Conditions.

## 13. Force majeure

13.1 Neither party shall be liable for any default due to any act of God or civil disturbance, malicious damage, strike, lock-out, industrial action, fire, flood, drought, extreme weather conditions, power shortage, compliance with any law or governmental order, rule, regulation, direction or any other circumstance beyond the reasonable control of either party;

13.2 Each party shall give notice forthwith to the other upon becoming aware of a force majeure event, the notice to specify details of the circumstances giving rise to the force majeure event.

## 14. Notices

14.1 Any notice under, or in connection with these Conditions, should be in writing and should be served by first class post or by hand on a party, sent by recorded delivery to the trading address of the party, or at or to such other address that may be subsequently notified by one party to the other.

## 15. Privacy

15.1 RDL may request and collect personal information about the Client before agreeing to supply Design Services in order to carry out such credit checks or references as it thinks appropriate. The failure to provide information requested by RDL may result in a Project Order being declined or a Project subsequently being terminated by RDL.

15.2 The Client has rights of access to personal information so collected, subject to the provisions of the Privacy Act 1993.

15.3 The Client agrees that its personal information may be used by RDL to advise the Client of RDL's services.

15.4 The Client authorises the disclosure of personal information held by any other party to RDL regarding any previous sale agreements entered into by the Client and/or any information in relation to the financial position of the Client.

15.5 The Client agrees that RDL may release to other parties information regarding this contract in order to enforce the terms and conditions of this contract.

## 16. Law of Contract

16.1 This contract shall be governed by the laws of New Zealand and the parties irrevocably accept the jurisdiction of the New Zealand Courts.