

The following terms and conditions apply to all products and services provided by Andrew Burdett Design to the Client.

## 1. Definitions and interpretation

1.1 In these Conditions:-

"ABD" means Andrew Burdett Design Limited;

"Brief" means the written brief (if any) for the Products and/or Services referred to or contained in the Quotation as the such brief may be amended from time to time with the written agreement of ABD and the Client;

"Client" means the person who accepts the Quotation and/or commissions work;

"Conditions" means the conditions set out in this document and (unless the context otherwise requires) includes any special conditions appearing on the Quotation;

"Contract" means the contract for the supply by ABD to the Client of Products and/or Services;

"Products" means the artwork, designs or other products (including any instalment of any products) which ABD is to supply to the Client in accordance with these Conditions;

"Quotation" means the written quotation provided by ABD for the supply of Products and/or Services;

"Services" means any consultancy or other services which ABD is to provide to the Client in accordance with these Conditions.

1.2 Reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. The supply

2.1 ABD supplies and the Client purchases the Products and/or Services in accordance with the Quotation once accepted by the Client subject to these Conditions, which shall govern the Contract to the exclusion of any other terms. The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from the Contract.

2.2 No variation to these Conditions shall be binding unless approved in writing by Andrew Burdett.

2.3 Any advice or recommendation given by ABD or its employees or agents to the Client as to the use of any Products not confirmed in writing by ABD is acted upon at the Client's own risk, and accordingly ABD is not liable for any such advice or recommendation not so confirmed.

2.4 Any error or omission in any sales literature, quotation, price list, invoice or other document or information issued by ABD is subject to correction without liability to ABD.

2.5 No right or licence is granted to the Client under any intellectual property right in the Products and/or Services or otherwise created in connection with the Contract ('IPR') save for the right of the Client to use the Products for the purposes specified in the Quotation. Accordingly all IPR shall remain the exclusive property of ABD and the Client agrees to acknowledge the ownership of ABD in a form approved by ABD whenever the Client reproduces such IPR.

2.6 Unless stated otherwise, artwork for print will only be supplied as pdfs.

Original design files (Quark, InDesign, Photoshop or Illustrator) will not be supplied unless specifically stated on the quotation.

## 3. Quotations and briefs

3.1 The Client is responsible to ABD for ensuring the accuracy of any information referred to in the Quotation (including any Brief) submitted by the Client, and for giving ABD any necessary information relating to the Products and/or Services within a sufficient time to enable ABD to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of the Products and/or Services is set out in the Quotation.

3.3 The Client is to indemnify ABD for all loss, damages, costs and expenses incurred by ABD in connection with any claim for infringement of any intellectual property rights of any other person resulting from ABD's use of the Brief.

3.4 ABD may make any changes in the Brief required to conform with any applicable statutory or EU requirements or, in the case of any products, which do not materially affect their quality or performance.

3.5 The Quotation once accepted by the Client may not be cancelled by it except with ABD's written agreement and on terms that the Client is to indemnify ABD against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by ABD as a result of cancellation.

## **4. Price**

4.1 The price of the Products and/or Services shall be as set out on the Quotation. Subject to clause 4.2, all prices quoted are valid for one month only or such other time as specified in the Quotation or until earlier acceptance by the Client, after which time they may be altered by ABD without notice.

4.2 ABD may be giving notice to the Client at any time before delivery, increase the price of the Products and/or Services to reflect any increase in the cost to ABD due to: (a) any factor beyond the control of ABD (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of production), (b) any change in delivery dates or performance, quantities or specifications for the Products and/or Services requested by the Client, or (c) any delay caused by any instructions of the Client or failure of the Client to give ABD adequate information or instructions.

4.3 The Client is liable to reimburse to ABD any expenses properly incurred by it in performing any Services.

4.4 The quoted price is exclusive of any applicable VAT which the Client is liable to pay to ABD.

## **5. Payment**

5.1 Save where otherwise stated in the Quotation, ABD may invoice the Client for the price of the Products and/or Services on or at any time after their delivery, unless Products are to be collected by the Client or the Client wrongfully fails to take delivery of any Products, in which event ABD may invoice Client for the price at any time after ABD has notified Client that such Products are ready for collection of ABD has tendered delivery of the Products, as the case may be.

5.2 Save where otherwise stated in the Quotation, the Client will pay the price of the Products and/or Services in full within 14 days of ABD's invoice. ABD may recover the price, notwithstanding that delivery may not have taken place and title in the Products not passed to the Client. Time of payment of the price is of the essence of the Contract.

5.3 Receipts for payment will be issued only upon requests. If Client fails to make any payment on the due date then, without prejudice to any other ABD right or remedy, ABD may:-

- (a) cancel the Contract or suspend the Services or any further deliveries to the Client;
- (b) appropriate any payment made by Client to such of the Products and/or Services (or products or services supplied under any other contract between Client and ABD) as ABD may think fit (notwithstanding any purported appropriation by the Client); and
- (c) charge the Client interest (before and after any judgment) on the amount unpaid, at the rate of 3% per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.4 Deposits are non-refundable.

## **6. Delivery**

6.1 Delivery of Products is made by the Client collecting the Products from ABD's premises after ABD has notified Client that the same are ready for collection or, if some other place for delivery is agreed by ABD, by ABD delivering the Products to that place. Delivery of Services takes place upon completion of the performance of such services.

6.2 Dates quoted for delivery of Products or performance of Services are approximate only and ABD is not liable for delay in delivery or performance however caused. Products may be delivered in advance of the quoted delivery date upon ABD giving reasonable notice to Client.

6.3 Where Products and/or Services are to be delivered in instalments, each delivery constitutes a separate contract and failure by ABD to deliver any one or more of the instalments in accordance with these Conditions or any claim by Client in respect of any one or more instalments does not entitle the Client to treat the Contract as a whole as repudiated.

6.4 Time of delivery or performance shall not be of the essence of the Contract.

## 7. Risk and title

7.1 Risk in Products passes to the Client:

- (a) where Products are delivered from ABD's premises, when ABD notifies Client that the same are available for collection; or
- (b) where Products are delivered other than from ABD's premises, on delivery or, if the Client wrongfully fails to take delivery of the Products, when ABD has tendered delivery.

7.2 Notwithstanding delivery, passing of risk in the Products, or any other provision of these Conditions, title in Products does not pass to the Client until ABD has received in cash or cleared funds full payment of the price of the Products and all other products and/or services to be supplied by ABD to the Client for which payment is then due.

7.3 Until title in the Products passes to the Client, ABD may require the Client to deliver up the Products to ABD and, if it fails to do so, may enter upon any premises of the Client or third party where the Products are stored and repossess the same.

7.4 The Client may not pledge or charge by way of security any Products owned by ABD, but if the Client does so all moneys owing by it to ABD become (without prejudice to any other ABD right or remedy) due and payable.

## 8. Warranties and liability

8.1 ABD warrants that the Products and/or Services shall correspond in all material respects with the Brief (if any) as at delivery. Where there is no Brief then ABD warrants that the Products shall be of satisfactory quality and that Services are performed with reasonable skill and care. However, ABD is under no liability:

- (a) for any defect in the Products and/or Services arising from any drawing, design or specification supplied by the Client;
- (b) where the Client fails to follow ABD's instructions or recommendations in connection with the use of any Products or the provision of Services;
- (c) where the Products are altered other than by ABD;
- (d) if the price for Products and/or Services has not been paid by the due date for payment; or
- (e) once any Products have been approved in writing by the Client.

8.2 Subject as provided in these Conditions and except where the Products and/or Services are supplied to a person dealing as a consumer (defined in Unfair Contract Terms Act 1977), all terms implied by law are excluded to the fullest extent permitted.

8.3 Any claim by the Client based on a defect in quality or condition of Products and/or Services or their failure to correspond with specification (a 'Claim') must (whether or not delivery is refused by the Client) be notified to ABD within 7 days of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure, provided that the Client notifies ABD of such defect or failure within one month of delivery. If delivery is not refused and the Client does not notify ABD accordingly, then:

- (a) the Client may not reject any Products, (b) ABD will have no liability for such defect or failure, and (c) Client is bound to pay the price as if the Products had been delivered in accordance with the Contract.

8.4 Where a valid Claim is notified to ABD in accordance with these Conditions, ABD may replace the Products or re-perform the Services, as appropriate, free of charge or refund to the Client the price of the Products and/or Services, but shall have no further liability to the Client.

8.5 Except where death or personal injury is caused by ABD's negligence, ABD is not liable to Client by way of representation (unless fraudulent), common law duty or under any express or implied term of the Contract, for any indirect, special or consequential loss or damage whether for loss of profit or otherwise (whether caused by the negligence of ABD, its employees or agents or otherwise) arising in connection with the supply of the Products and/or Services or their use by the Client. Save where death or personal injury is caused by ABD's negligence which liability is unlimited, the entire liability of ABD in connection with the Contract shall not exceed the amount paid by the Client under the Contract during the preceding 6 months, except as expressly provided in these Conditions.

ABD's obligations under the Contract will be suspended to the extent that it is prevented or hindered from complying by any cause beyond its reasonable control.

8.6 ABD will use reasonable endeavours to remedy such cause and will resume the performance of such obligations as soon as reasonably possible after the removal of the cause.

## **9. Insolvency of the Client**

9.1 Without prejudice to any other ABD right or remedy, ABD may cancel the Contract or suspend any further deliveries under the Contract if:-

- (a) the Client makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (other than by way of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the Client's undertaking; or
- (c) the Client ceases, or threatens to cease, to carry on business; or
- (d) ABD reasonably believes that any of the above events is about to occur.

9.2 Where any of the circumstances in clause 9.1 apply then if any Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **10. Website / Internet**

10.1 ABD may purchase domain names on behalf of the Client. Payment and renewal of those domain names is the responsibility of the Client. The loss, cancellation or otherwise of the domain brought about by non or late payment is not the responsibility of ABD. The Client should keep a record of the due dates for payment to ensure that payment is received in good time.

10.2 ABD cannot accept responsibility for any alterations caused by a third party occurring to the Client's pages once installed. Such alterations include, but are not limited to additions, modifications or deletions.

10.3 In the event that the Client already has their own hosting service or wishes to use a hosting service other than one supplied by ABD, ABD cannot guarantee the correct functioning of the website or any existing scripts, including form scripts, on that server. In the event of problems occurring in these circumstances, ABD will make every effort to remedy the problem, but any additional programming work incurred as a result will be charged at cost.

10.4 If the Client has registered or already owns a domain name, with or without hosting, that they wish to use with their website, it is the responsibility of the Client to either initiate the transfer of their domain to a hosting service supplied by ABD, or to provide ABD with FTP access to an existing web space. ABD cannot be held responsible for any delays caused by domain transfer problems and the Client will be invoiced in full on completion of the website, whether or not the site is live.

10.5 If the Client's website is to be installed on a third-party server, ABD must be granted read/write access to the Client's storage directories which must be accessible via FTP. ABD will retain access rights to the third-party server unless cancelled by the Client in writing. Depending on the specific nature of the project, other resources might also need to be configured on the server.

10.6 Should the Client fail to pay for services ABD reserves the right to take down any website, design or development work. ABD also reserves the right to post on the server and the internet the reason for the removal of a site.

10.7 It is the responsibility of the client to ensure they are GDPR compliant and brief ABD appropriately. ABD has no responsibility for GDPR compliance of its clients websites, mailing list and databases.

## **11. General**

11.1 ABD may assign or sub-contract all or any of its rights and obligations under this Contract.

11.2 Notices required or permitted to be given under these Conditions must be in writing addressed to the relevant party at its registered office or principal place of business.

11.3 No waiver by ABD of any breach of the Contract by the Client is considered as a waiver of any subsequent breach of the same or any other provision.

11.4 If any provision of these Conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question is not affected.

11.5 All ABD services may be used for lawful purposes only. You agree to indemnify and hold ABD harmless from any claims resulting from your use of our services that damages you or any other party.

11.6 The Contract is governed by the laws of England. The Client will submit to the non-exclusive jurisdiction of the English courts.