

## DESIGNTOO LIMITED

### Terms and Conditions

Issued by and on behalf of Designtoo Limited, Gloucestershire, UK. 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 Designtoo and Client.
Approval Period	Period between notification by Designtoo 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.
Business Hours	"Business Hours" shall be Monday to Friday, 9am to 5pm local time in the UK.
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.
Designtoo	Designtoo Limited
Design Total	Cost of creative work undertaken by Designtoo. 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 Designtoo. They may not be agreed verbally.
Quote	A fixed price or cost provided in writing. Designtoo will not charge more than this unless the Agreed Specification changes.
Services	Services shall be any services provided to the Client.
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 Agreement	This document
The Work	The item of work for which Designtoo has been contracted.
Third-Party	Any organisation, or individual, singular or otherwise not Designtoo or the Client.
We	Designtoo 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 or awareness 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.
- 100% of the Software Total as an advance payment.
- 40% of the Design Total as an advance payment.
- 20% of the Design Total on completion of work equivalent to the 40% advance.
- Subsequent payments equal to 20% of the Design Total each time that work done equals amounts paid.

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

#### 3. Price variation

Estimates are based on Designtoo'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 Designtoo to the client are considered estimates unless otherwise specified. All prices or costs provided by Designtoo 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. Payment is due on receipt of 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. Credit Enquiries

Designtoo may make a search in relation to the Client with a credit reference agency and make other credit enquiries from time to time, keep a record of any search and enquiries and share that information with third parties. Designtoo may also make enquiries about the principal directors/proprietors of the Client with a credit reference agency.

#### 6. Tax

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

#### 7. 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 applicable under Late Payment of Commercial Debts (Interest) Act 1998 to run from the due date for payment thereof until receipt by the Company of the full amount whether before or after judgement.

#### 8. 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, Designtoo without prejudice to other remedies shall:

- 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
- 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

### 9. Preliminary work

All work carried out, whether experimentally or otherwise, at the client's request shall be charged.

### 10. Minimum charge

There is a minimum charge of half an hour for any work undertaken by Designtoo

### 11. Client Review and Approval

Designtoo 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.

### 12. 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 Designtoo.

### 13. 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.

### 14. Materials supplied by the Client

The quality of any material provided by the client is the responsibility of the client. Designtoo 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.

### 15. Proofs & Drafts

All work may be submitted for client's approval and Designtoo 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 Designtoo'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.

### 16. 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 Designtoo remains copyright Designtoo. 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 Designtoo.

Any third-party material agreed by the client will remain copyright the third-party. Any fees or other associated costs are payable by the client directly to the third-party unless Otherwise Agreed.

### 17. Alterations by Client or Third-Party.

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

### 18. Standing Material

Metal, film, glass and other materials owned by Designtoo 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.

### 19. Client's Property

Client's property and all property supplied to Designtoo by or on behalf of the client shall while it is in the possession of Designtoo 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.

### 20. Access Requirements

The client agrees to offer all support, practical assistance and information required by Designtoo 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), third-party resources.

### 21. Design Credit

Websites: a link to the designtoo website <http://www.designtoo.com> with the wording "design: Designtoo.com" (or equivalent) or, if the site is to be hosted by us, "Designed and hosted by Designtoo.com" 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.

### 22. 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 Designtoo shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

### 23. 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 Designtoo 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 Designtoo within 7 days (5 working days) of delivery. Designtoo 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.

### 24. Variations in Quantity

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

## TECHNICAL SUPPORT

### 25. Timely Manner

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

### 26. Charges

Designtoo 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.

## INTERNET

### 27. Domains

Where the Client has requested to purchase a Domain Name, then Designtoo shall only be acting as an agent for the relevant Domain Name registry, and so a Domain Name registration or renewal is subject to the Terms & Conditions published by the Domain Name registry. When the Client requests to purchase a Domain Name, Designtoo shall forward this request to the relevant Domain Name registry within a reasonable timescale of payment of any Fees due for that registration being received by Designtoo. Designtoo shall not be responsible in the event that it is unable to register the requested Domain Name for whatever reason that the Domain Name is unavailable for registration. Once a Domain Name has been registered, then the Client shall have the right to use that Domain Name in accordance with the relevant Terms & Conditions of the relevant Domain Name registry for the time period for which the appropriate fees have been paid. Prior to expiry of the Domain Name, Designtoo shall send a notification to the Client by e-mail to the address which it holds for the Client. The Client shall notify Designtoo of its intention to renew the Domain Name. In the event that a Domain Name passes its expiry date, then additional charges may be incurred if the Client wishes to renew the Domain Name after the expiry date. The Domain Name registry may also suspend the Domain Name until the Client has renewed the Domain Name with Designtoo. Designtoo reserves the right to not renew any Domain Name on behalf of the Client until payment for its renewal has been received. If a Domain Name is not renewed within a timescale as specified by the Domain Name registry, then the registry shall reserve the right to make the Domain Name available for registration by any other person and Designtoo shall not be liable to the Client if this occurs. The Client shall have no right to bring any claim against Designtoo in the event that it is unable to register or renew a domain name, and Designtoo shall reserve the right to impose an administration charge to the equivalent value of the original registration or renewal request in the event that it is unable to register or renew a domain name.

#### 28. Exceeding agreed levels

Additional Fees will become payable if the Client exceeds any agreed or stipulated webspace or bandwidth levels and these Fees will become due immediately upon request by Designtoo;

#### SERVICES

##### 29. Internet

the Client acknowledges that, given the nature of such Services, that Designtoo cannot guarantee that any Services when delivered via the internet will be uninterrupted or error free.

##### 30. Timescales

Designtoo will endeavour to provide any Services requested by the Client in accordance with any timescale discussed with the Client but these timescales are estimates provided by Designtoo and Designtoo shall inform the Client if there is any anticipated delay but shall not be liable to the Client where it fails to meet the estimated timescale.

##### 31. Improvement

Designtoo may, at any time, improve, correct or otherwise modify any of the Services provided to the Client provided that such modification does not materially affect provision of the Services to the Client. Designtoo shall endeavour to provide the Client with reasonable notice of any such modification where practical.

##### 32. Access

Designtoo will, upon arrangement and provided that no fees are payable, allow the Client reasonable access to any computer equipment owned by the Client but hosted by Designtoo as part of its Services. In the event that any Fees are due to Designtoo, then Designtoo shall reserve the right to deny access to the equipment. Designtoo has a general and particular lien over any equipment, software or other systems provided by the Client until all claims and money payable by the Client to Designtoo on any account whatsoever have been received in full clear funds. If the Client fails to discharge any lien with a reasonable timescale then the equipment, software or other systems may be sold in or towards satisfaction of that lien and Designtoo will account to the Client for any excess.

##### 33. Suspension & Discontinuation

Designtoo shall reserve the right to suspend or otherwise discontinue provision of any Services in the event that any Fees due by the Client are unpaid, or in the event that the Client is in breach of Designtoo's Acceptable Uses Policy. Designtoo shall only be obliged to recommence provision of the suspended Services during Business Hours and only once the Client is no longer in breach of the Acceptable Uses Policy or has paid all relevant outstanding sums due to Designtoo together with any relevant re-instatement fee.

##### 34. Basis of provision

Designtoo shall provide Services on an "as is" and "as available" basis and no warranty or representation (expressed or implied) of any kind are given, including as to satisfactory quality and fitness for a particular purpose. In particular, Designtoo gives no warranty or representation that:

- The Services will meet the Client's requirements
- The Services will be provided on an uninterrupted, timely, secure or error-free basis; or
- Any results obtained from the use of the Services will be accurate, complete or current.

##### 35. Use of services

the Client shall use any Services provided by Designtoo in accordance with the Acceptable Uses Policy.

If, in the opinion of Designtoo, the Client is in breach of clauses 4.0 and 4.1 then Designtoo may, without prejudice to its other rights and remedies immediately suspend the provision of the Services; terminate The Agreement or amend or remove any content appearing on any website or other system hosted by Designtoo on behalf of the Client

##### 36. Knowledge

the Client acknowledges that it has appropriate knowledge of how to use the Services provided by Designtoo, and acknowledges that Designtoo shall have no obligation to:

- Train the Client on how to use the Services;
- Train the Client to use any software whether or not provided by Designtoo or, including - but not limited to - web browsers, Web Design software, FTP software or e-mail software, which is required to use the Services;
- Train the Client on the use of hardware whether or not supplied by Designtoo but which is required to use the Service

##### 37. Suspension & Discontinuation

Designtoo shall reserve the right to suspend or otherwise discontinue provision of any Services in the event that any Fees due by the Client are unpaid, or in the event that the Client is in breach of Designtoo's Acceptable Uses Policy. Designtoo shall only be obliged to recommence provision of the suspended Services during Business Hours and only once the Client is no longer in breach of the Acceptable Uses Policy or has paid all relevant outstanding sums due to Designtoo together with any relevant re-instatement fee.

#### OTHER

##### 38. Governing Law

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

##### 39. Assignment

The Client may not assign the benefit or delegate the burden of The Agreement nor sub-licence any of its rights under The Agreement (including to an associated company) without the prior written consent of Designtoo. Any consent provided by Designtoo under this clause is given on condition that the assignee or licensee, as the case may be, agrees to comply with the terms of The Agreement as if they were the Client. Designtoo may assign or sub-contract any or all of its rights and obligations under The Agreement.

##### 40. Failure to Exercise

The failure or delay by either party in exercising any right, power or remedy of that party under The Agreement will not in any circumstances impair such right, power or remedy nor operate as a waiver or it. The single or partial exercise by either party of any right, power or remedy under The Agreement will not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy.

##### 41. Waiver

Any waiver by either party of a breach of or default under the terms of The Agreement by the other party is not deemed a waiver of any subsequent breach or default and in now way affects the other terms of The Agreement.

##### 42. Notice

Any notice to be given or made by either party under or in connection with The Agreement must be in writing and given or made to the other party at its address stated at the time when placing the order or to other addresses as either party may from time to time notify to the other. Every notice, if so addressed, is deemed to have been duly given or made, if delivered by hand, upon delivery at the address of the relevant party; if sent by Post, two Business Days after the date of posting and if transmitted by facsimile or e-mail, at the time of transmission.

##### 43. Liability

Designtoo 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 Designtoo
- 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 Designtoo
- Any damages which result from the downloading of material, data, text, images, video or audio from any website designed by Designtoo
- Any content in any website linked to a website designed by Designtoo 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 Designtoo 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 Designtoo.
- Designtoo 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 Designtoo including web hosting and internet marketing services or obtained in any manner through or in connection with any material. Designtoo makes no warranties of any kind, expressed or implied for the services it provides.
- Designtoo disclaims any warranty or merchantability or fitness for a particular purpose. Without limiting the foregoing, Designtoo 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 Designtoo.
- Designtoo 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 Designtoo be liable for any damages in excess of any monies received by Designtoo from the Client.

#### 44. Indemnities

the Client will fully indemnify and keep Designtoo and its associated companies, officers, partners, employees, subcontractors, agents and authorised representatives fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including legal fees) whatsoever incurred by it and arising from any of the following:

- the Client's breach of The Agreement, negligence or other default,
- The operation or break down of any IT systems owned or used by the Client or
- the Client's use or misuse of the Service, including any claims made against Designtoo arising from the content of the Client's websites, e-mails or other use of Designtoo's Services.

Designtoo and its associated companies, officers, partners, employees, subcontractors, agents and authorised representatives shall be fully 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.

#### 45. Force Majeure

Designtoo 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.

#### 46. Acceptable Use Policy

For the avoidance of doubt, any activities or actions undertaken by clients, employees, contractors or suppliers of the Client which are in breach of Designtoo's Acceptable Uses Policy shall be deemed to be a breach by the Client, whether such actions are undertaken with or without the knowledge or consent of the Client.

Designtoo does not permit the Client to use its services for the purposes of distributing:

- Ware or other pirated software.
  - Racial Hatred.
  - Encouragement of Terrorism.
  - Abusive, Defamatory, Harmful, Malicious, Obscene, Offensive, Pornographic or Threatening Material.
  - Material which is illegal under UK law.
  - Copyrighted images, video or audio material without the permission of the copyright holder.
- Designtoo reserves the right to delete any "inappropriate" material from the Client's account without prior notice.

The Client must only use any allocated webspace for the purposes of their website, and should not use any webspace for the purpose of storing files not directly related to the website.

Designtoo does not permit the running of IRC client, IRC server, IRC proxy or any other IRC related software on shared, dedicated or co-located servers on its network without the prior written permission of Designtoo. Designtoo reserves the right to delete such software and implement firewalls in order to protect the integrity of its network.

the Client may not store more data than is assigned to the Client as part of his account and Designtoo shall reserve the right to delete any stored material where the total data exceeds the allotted limit to bring it within the limitations of the particular account.

the Client may not exceed any Data Transfer or Bandwidth limits assigned to his account, and Designtoo shall reserve the right to charge the Client for any excess usage at a rate of £20.00 per GB or £200.00 per Mb/s where an excess usage rate has not already been specified.

the Client may not divulge any FTP, FrontPage, POP-3, SMTP, Control Panel or other password to any third party and should take reasonable precautions to ensure they are not discovered by any other party.

the Client may not send unsolicited e-mails (spam), adult material or illegal material through the mail servers of Designtoo or provided by Designtoo.

the Client shall not install software or scripts on the server, or otherwise use the service provided in such a manner that it causes a nuisance, disturbance, interruption or inconvenience to Designtoo and/or its Suppliers and/or its Employees and/or its other Clients. the Client shall be responsible for ensuring any software or scripts installed on Designtoo's servers are kept up to date and free from any security breaches.

#### 47. 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.

Designtoo reserves the right to revise its terms, conditions and charges at any time and without prior notice.