



# NUHJ LTD

## TERMS & CONDITIONS OF BUSINESS

This document sets out our Terms and Conditions of Business. They form part of the contract that we will have with you that is based on our Proposal. When you sign the Proposal, you are acknowledging that you accept these Terms. So, before we enter into a contract with you, it would be a good idea for you to read them through so that everyone knows precisely where they stand. If there's anything you don't understand, please get in touch so that we can discuss your concerns.

### 1. Definitions

To make things a little easier, there are certain words in these Terms that we will use several times, so rather than defining them each time, we will define them here.

*Contract:* the contract between you and us that is based on the Proposal, subject to these Terms, incorporating any other documentation referred to in these Terms or the Proposal, such as Special Conditions or contract variations;

*Completion:* the completion of the Project, which will take effect when you accept the Deliverables;

*Deliverables:* the product of the Services, which will usually be delivered to you in a suitable electronic format of our choosing;

*Embargo Date:* the date specified in the Proposal, if any, before which we will make no reference to the Project or the Contract;

*Fees:* the price stated in the Proposal that we are to charge for the delivery of the Services, excluding VAT and other applicable taxes and any expenses that must be incurred in the delivery of the Project;

*Input Material:* any materials of any description that you are to provide to us for the purposes of the Project;

*IP:* copyright, trade marks, patents, registered and unregistered design rights, confidential information and all other intellectual property and proprietary rights, powers and benefits, including the right to register, transfer, licence and assign those rights;

*Pre-Existing Materials:* materials either owned by us or used by us under licence and which existed at the commencement of our delivery of the Services or which were created otherwise than exclusively for the purpose of the creation of the Deliverables and/or the delivery of the Project;

*Project:* the objective for which the Services are to be delivered, as described in the Proposal

*Proposal:* the document referenced in clause 2.5 that sets out the detail of the Project that we are to undertake for you, as amended from time to time in accordance with these Terms (unless the context implies to the contrary);

*Services:* the services specified in the Proposal that we will deliver, subject to these Terms;

*Specification:* such specification for the Deliverables as may be specified in the Proposal;

*Terms:* means these Terms & Conditions of Business, which includes any other documentation referred to in them, such as Special Conditions, contract variations or our Privacy Policy.

1.2 The headings in the Terms are for convenience only and will not affect their interpretation. Any reference to any enactment (statutes, regulations, etc.) includes a reference to that enactment as amended from time to time and to any subordinate legislation made thereunder.

### 2. How the Contract Works

2.1 When we use words in this document such as "we", "us" or "our", we are referring to NUHJ Limited. We are a company registered in England and our registered office is located at the 62 Ouseburn Wharf, St. Lawrence Road, Newcastle Upon Tyne, United Kingdom, NE6 1BY. Our company registration number is 11964432 and our VAT registration number is 123456789.

2.2 When we use words such as "you" or "your", we are referring to you, our client. However, it may be that you are actually an agency engaging us to deliver services on behalf of your client, in which case, for the most part, we will be referring to your client.

2.3 When you are engaging us as an agent in legal terms (which is to say, you are hiring us on behalf of your client), you confirm that you have the authority to bind your client into this contract with us. If you do not have that authority, you will be liable for any failure by your client to honour what would have been its commitments under these Terms.

2.4 If you are sub-contracting to us, our contract is with you and you will be entirely responsible for any failure to comply with these Terms. We do not offer Services "on spec" and we will not deliver services on the basis that the project has "yet to be signed off" or that "finance has still to be agreed" or anything similar. If you sub-contract to us, you confirm that you are ready for us to proceed as outlined in the Proposal and that you will comply with these Terms. If you are not ready to enter into a legally enforceable relationship, please don't contract with us until you are. This is not a matter of trust or goodwill. It is simply about making sure we all know where we stand.

2.5 We will use these Terms and Conditions alongside some form of "Proposal" document. That may be a formal document to which these terms are appended, or it may be a summary description of services to be delivered and the charges for doing so in an email to which a copy of these Terms are attached. However we put the Contract together, the Proposal contains the detail that is specific to the Project and this document contains the legal infrastructure upon which the Services will be delivered.

2.6 When we send you the Proposal and a copy of these Terms, we are not making an offer to you for contractual purposes. Please bear in mind that it is your responsibility to check that the Proposal is correct. Don't assume that it is. If you wish to proceed on the basis of the Proposal, you can accept the proposal by following the directions that we give you (such as signing in the place indicated or, in lower value contracts, by replying by email perhaps to indicate that our Proposal is acceptable). In lieu of such a response, you may also accept the proposal by paying a deposit or by instructing us to commence the delivery of the Services. For the purposes of the Contract, your response will be an offer that we will then accept perhaps by signing the Proposal document ourselves, or by sending an email confirming the same, or perhaps just commencing the delivery of the Services that are the subject of the Contract.

2.7 It may be that you have asked us to prepare a "Quotation" for the purpose of planning or budgeting a project. Whilst we provide such documents in good faith, they carry no legal weight and do not constitute an offer to enter into a contract with you. We may withdraw Quotations at any time.

2.8 When you consider our Proposal to be satisfactory and you indicate that you wish to proceed and we, in accordance with clause 2.6 above, accept your offer, there will be an enforceable Contract between us. That Contract is made up of these Terms, the

Proposal and any other documentation referred to in these Terms or the Proposal, such as Special Conditions, change control arrangements and contract variations.

### **3. Changes to These Terms**

- 3.1. Sometimes it is necessary to make changes to these Terms. Where we are doing that at the outset, we will include "Special Conditions" in the Proposal. The effect of doing so is that where the Special Conditions contradict anything in these Terms, the Special Conditions override the Terms but only to the extent that they contradict the Terms. We will usually cite specific clauses within these Terms that will be overridden, but you may take it as read that the Special Conditions take priority unless we state explicitly to the contrary in the Special Conditions.
- 3.2. It is often necessary to make changes to a project as it proceeds. Generally, such changes will be details that do not affect the Contract. For example, you may wish to adopt a revised logo or colour-palette. However, where it becomes necessary to change any of the details contained in the Proposal (say, should it become obvious that the Services you have asked us to provide will not fit with the nature of the Deliverables you require and either one, the other or both have to be amended) these changes will only take effect for the purposes of the contract where the following procedure is followed:
  - 3.2.1. Should you wish to make changes to the scope of the Services to be delivered, you will confirm such changes in writing (even when we have discussed these changes with you orally).
  - 3.2.2. On receiving your written request to make changes, we will confirm in writing the effect that making the changes in question will have on the Contract overall. This may mean a change to the pricing, the estimated delivery date or there may be other changes. It may also be necessary in some cases to ask you to settle further expenses before they are incurred.
  - 3.2.3. Should you wish to proceed with the changes, you must then respond as directed, confirming that you accept the changes proposed. At that point (and only at that point) the Contract will be varied to take account of the changes made.
- 3.3. Occasionally, it may be necessary to make technical changes to these Terms that do not involve the type of changes to scope, delivery or cost of the project envisaged by clause 3.2. Where this is necessary, no such variation of these Terms shall be valid unless it is confirmed in writing and signed by at least one of our Directors.
- 3.4. Leaving clauses 3.2 and 3.3 aside for the moment, it will often be necessary for us to make decisions during a Project that give rise to minor changes to the Services but which do not affect the overall scope of the Services to be delivered, the Deliverables or the outcome of the Project as a whole. In such a situation, it will often be impractical or even impossible to consult with you within a reasonable timeframe, therefore you agree that we may make minor changes like this without consulting you as long as they do not adversely affect the outcome of the Project in a material way.
- 3.5. The Contract, as defined in and by these Terms, constitutes the entire agreement between you and us and it supersedes any previous agreements made or promises given either by you or by us with regarding the Project. If a statement is not written into the Contract, it doesn't form part of the Contract and, save for instances of fraud or fraudulent misrepresentation, it won't be enforceable. If, having read the Proposal, you believe there to be any important detail missing, please tell us so that we can amend the Proposal to take this into account. It is essential that everyone is on the same page as far as the Project is concerned and it is better for the Proposal to be a bit too detailed than to leave things out that could give rise to a disagreement over whether something was or wasn't included within the Specification or the Proposal more generally. There is no room for implying that certain things were to be included here. It's either in or it isn't and if it's in, it will be cited somewhere in the documentation that makes up the Contract. If it isn't, it won't form part of the Project.
- 3.6. Once our Contract with you has been formed, you may not cancel the Project or purport to terminate the Contract without our express consent. The provision of our consent will be conditional on a financial settlement between you and us that reflects lost production time (including an element of profit thereon), wasted labour and materials and expenses incurred.
- 3.7. If you breach any of these Terms, then in cases where that breach can be rectified, you fail to correct that breach within 30 days of written notice from us specifying the breach and requiring its rectification, we may terminate the Contract on written notice with immediate effect. Where the breach is not capable of rectification, we may terminate the Contract with immediate effect by giving you written notice. Should it become necessary for us to terminate the Contract then our termination will not affect any Fees or other sums chargeable to and payable by you in respect of Services provided to you up to and including the effective date of that termination.
- 3.8. By way of an alternative to our rights under clause 3.7, at any time following written notice from us specifying the breach and requiring its rectification, we may suspend our delivery of the Services (including withholding the delivery of any Deliverables that are ready for Completion) until you have corrected the breach in question. If we choose to suspend the delivery of Services pending rectification of a breach cited in our notice to you, we won't be liable for any harm that you suffer as a result of the ensuing delay in the delivery of the Services as long as we resume delivery of Services within a reasonable time following the rectification of the breach in question.
- 3.9. We don't take our rights to terminate the Contract or suspend delivery of Services (whether under clauses 3.7 and 3.8 or provided for elsewhere in the Terms) lightly. We will only do this where we feel that to safeguard our business, we have no other option. The best way to avoid this happening is to maintain a dialogue when things are difficult. Consequently, if you become aware of a breach by you of your obligations under these Terms (or you become aware that such a breach is likely to occur), you will inform us of this in writing as soon as possible. We will then work with you in good faith to try to minimise the impact that any such breach has on the Project.

### **4. Charges & Payment**

- 4.1. Unless we have stated explicitly to the contrary, the Fees are exclusive of VAT and other applicable taxes, which you will pay in addition. We will usually list in the Proposal the expenses that we are likely to incur in delivering the Services (for practical purposes, bear in mind that such expenses may be estimates only, which are given in good faith but subject to change), but whether we do or do not, any such expenses will be paid by you in addition to the Fees.
- 4.2. If we incur further expense or cost (including administrative or legal costs) as a result of:
  - 4.2.1. damage caused by you or other third parties to the Deliverables; or
  - 4.2.2. your failure to provide us with adequate or any instructions; or
  - 4.2.3. your provision of instructions that are inaccurate, erroneous, unfinished or delayed;we may charge these costs and expenses in addition to the Fees.
- 4.3. You will pay all sums owed to us (including any VAT or other applicable tax) within 14 days of the date of our invoice accounting for those sums.

- 4.4. If you fail to make payment in accordance with clause 4.3 above, we may charge you interest on any unpaid amount (both before and after judgment) at a daily rate equivalent to 8% per annum above the Official Bank Rate from time to time of the Bank of England from the date upon which any such sum became due for payment to the date upon which payment is ultimately received. We may invoice for any such accrued interest at any time and if such further invoice is not settled in accordance with clause 4.3, we may charge interest on that invoice also in accordance with this clause 4.4.
- 4.5. If it becomes necessary for us to issue legal proceedings in respect of any breach by you of these Terms or of the Contract as a whole, you will reimburse us on an indemnity basis for all costs and expenses that we incur as a result of having to take that action.
- 4.6. In the event that you do not make payment as required by these Terms, we may withhold or suspend delivery of the Services until such payment is made and we will not be liable for any loss or damage you suffer as a result of the delay in delivery. In the event that you fail to settle any sums due to us in accordance with these Terms, we may terminate the licence of the Deliverables granted to you at clause 7.1 on notice in writing with immediate effect.

## **5. Service Delivery**

- 5.1. We will exercise reasonable skill and care in providing the Services and we promise that all individuals tasked by us in the delivery of the Services will be suitably trained and skilled for the purposes of the Project.
- 5.2. Timescales and delivery dates stated in the Proposal are estimates only. Given the nature of the Services that we deliver, it is not possible to guarantee that any dates for delivery will be met but they are given in good faith. You are not entitled to terminate the Contract because the Project won't be delivered in accordance with any timescales or delivery dates (whether as specified in the Proposal or as subsequently agreed).
- 5.3. You acknowledge that our ability to provide the Services on time and on budget depends upon your full and timely co-operation as well as the accuracy and completeness of any Input Material required. You agree to provide us with all such Input Material that we might reasonably require for the Project. We may have listed in the Proposal Input Material that, at the outset of the Project, we think we will need from you but if so, this isn't a comprehensive list. It may be that there is more Input Material required, especially if changes are made during the delivery of the Services. When we ask you to do so, you also agree to be responsible for checking each iteration of the Deliverables in order to ensure and confirm that the Deliverables meets the Specification.
- 5.4. The Project will be completed on the first of the following events to occur:
- 5.4.1. You are satisfied that the Deliverables meets the Specification and you inform us of this in writing; or
- 5.4.2. You make use of the Deliverables for your own purposes; or
- 5.4.3. You make the Deliverables available to the public (or to their intended audience) via any means or you instruct us (or a third party) to do so on your behalf.

## **6. Input Material**

- 6.1. You confirm that you are the sole beneficial owner of any and all IP in the Input Material or that you are entitled to make use of the Input Material and to grant a sub-licence of those rights to us (which licence you do hereby grant) for the purpose of the provision of the Services and the delivery of the Deliverables.
- 6.2. We acknowledge that you (or your licensors) are the owners of all IP in the Input Material and shall remain so throughout the Project. We will only use the Input Material for the purposes of delivering the Services and we shall return any hard copy IP to you at the end of the Project.
- 6.3. You warrant that the Input Material does not contain inappropriate material such as material that infringes applicable laws, regulations or the rights of third parties.
- 6.4. You will indemnify us in full against all liabilities, costs and expenses that we might incur as a result of using Input Material or preparing the Deliverables that arises from the infringement of IP belonging to third parties.

## **7. Deliverables**

- 7.1. Prior to Completion, you may use any Deliverables only for internal review and deliberation for the purposes of Project. The transmission or publication of the Deliverables prior to Completion without our written consent is strictly forbidden. Any publication of the Deliverables prior to Completion will constitute an infringement in respect of which we will be entitled to take action. You acknowledge that any damage we suffer is likely to be difficult to assess in financial terms and so we will be entitled to seek an injunction to restrain further infringements.
- 7.2. Strictly conditional upon:
- (i) the Completion of the Project in accordance with clause 5.5 of these Terms or the earlier termination of the Project by mutual consent; and
- (ii) the settlement in full of Fees due to us (other than Fees due in respect of support, maintenance and onward development of the Deliverables post-Completion)
- and subject also to the licence referenced below, we hereby assign to you by way of future assignment all title in the copyright in the Deliverables, such assignment to take effect upon receipt of the payment the last outstanding instalment of such Fees relating to the delivery of Services through which the Deliverables will be created.
- 7.3. Subject to any Embargo Date that we have agreed with you and, in respect of any confidential information contained within the Deliverables, subject to our obligations under clause 8, following Completion we may exhibit the Project in our portfolio in order to market our services to third parties. The assignment referenced above is subject to the grant by you of a non-exclusive licence to us to use such Deliverables in describing the Project for our portfolio and for marketing purposes. To be clear, we will never disclose anything for this purpose that you reasonably deem to be confidential to you.
- 7.4. We will execute all documents, give all assistance and do all acts and things, at your expense as may be necessary or reasonably desirable to vest in you the copyright in the Deliverables delivered. You will record and expressly recite in any such documentation the existence of our right to reuse the Deliverables in question in our portfolio and for marketing purposes as provided for at clause 7.3.
- 7.5. Although we will assign to you the copyright in the Deliverables, all IP rights in the Pre-Existing Materials are and shall remain our property (or the property of our licensors). You may not make use of, copy or disclose to any third party any scripts, underlying principles or ideas in any Services or Deliverables, whether or not such script, principles or ideas were discovered through your lawful use of the Deliverables.
- 7.6. The Deliverables may contain technical measures that we may use to ensure that the Deliverables are only used for the purposes stated in the Proposal and which may remain active only up until the point at which title to the copyright in the Deliverables transfers to you by virtue of clause 7.2.

- 7.7. Save for any infringement arising from your breach of your obligations in respect of the Input Material, we hereby warrant that as far as we are aware the Deliverables (and the use thereof) will not infringe the IP rights of any third party. In the event that we breach this warranty, we will indemnify you against any loss, damage, cost, expense or other claims arising from any such infringement.
- 7.8. It can often be more efficient for us to use materials created and/or owned by third parties as part of the creation of the Deliverables. Where this is the case, we will include reference to these third party materials in the Specification or more generally in the Proposal. Your use of these materials following Completion will be subject to a licence from the owners or controllers of the rights in those materials, which we shall provide to you at Completion if not before. We will review the terms of the licences applicable for those materials but you accept that ultimately it is your responsibility to ensure that the rights that the owners or controllers of those materials grant are sufficient for your purposes and if necessary, you will seek advice on this from a lawyer specialising in the subject. You accept that if you do not accept the terms of a licence that we reasonably feel to be sufficient for the purposes of the Project and as a result of which you require us to source other such materials (or even create them ourselves), any additional time or expense that we incur will be chargeable in addition to the Fees at our standard studio rates.
- 7.9. The Input Material and any other third party-sourced materials aside, we warrant that we will have title to and property in the Deliverables, which property will be free and unencumbered and/or that we have the right, power and authority to licence and ultimately to assign the copyright in the Deliverables to you in accordance with these Terms.

## **8. Confidentiality**

- 8.1. Except as otherwise provided in these Terms and subject to clauses 8.3 and 8.4, we will treat all Input Material as strictly confidential and we won't disclose it to any third party other than third party sub-contractors who are bound by an obligation of confidentiality to us and to whom it is necessary to provide the Input Material in order for us to deliver the Services.
- 8.2. Prior to Completion, you will treat the Deliverables, our Proposal and all prices quoted as strictly confidential and you shall not display, use or disclose the same to any third party for any reason whatsoever. You may not use our name or the names of any of our employees or contractors involved in the delivery of the Services in publicity relating to the Project unless we agree in writing in advance of the publication of such publicity.
- 8.3. Clauses 8.1 and 8.2 will not apply to any information or materials:
- 8.3.1. Already known to the receiving party or in its possession before the disclosure free from any obligation to keep the same confidential;
- 8.3.2. That is or becomes public knowledge through no fault of the receiving party;
- 8.3.3. Received from a third party without similar obligations of confidence and without breach of the Terms;
- 8.3.4. That can be proven to have been developed independently;
- 8.3.5. That the disclosing party discloses to a third party without similar restrictions on that third party's rights of disclosure; or
- 8.3.6. Approved for release by written permission of the disclosing party.
- 8.4. In the event that it becomes necessary for us to terminate the Contract under clause 3.7 or clause 4.6, our obligations of confidentiality to you will come to an end and you grant us permission to re-use the Input Material so that we may re-purpose the Deliverables in order to mitigate any loss or damage we have suffered and for which we have not been compensated.
- 8.5. We agree that we shall make no reference to the Project or the Contract until the Embargo Date.

## **9. Liability**

- 9.1. We will not be liable to you for any loss, damage, cost, expense or other claims for compensation arising from any Input Material or any instructions that you supply that are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or format or which arises from the late or non-arrival of such instructions or due to any other fault of yours or any delay in transit that is not caused by us.
- 9.2. Save as provided for at clause 9.6 below, we will not be liable to you by reason of:
- 9.2.1. any promise we've made in advance of forming the Contract with you (in legalese, a misrepresentation);
- 9.2.2. breach of implied warranty, condition or other term;
- 9.2.3. breach of any duty at common law or any duty imposed on us by virtue of any statute or regulation; or
- 9.2.4. breach of these Terms
- for any loss of profit, reputation, opportunity, goodwill, business or anticipated savings or any indirect, special or consequential loss, damages, costs, expenses or other claims (whether caused by our negligence or that of our employees, contractors or agents or otherwise) that arise out of or in connection with the delivery or late delivery of the Services or the nature or quality of the Deliverables, or the failure to provide the Deliverables or Services to you or any third party.
- 9.3. Save as provided for at clause 9.6, our entire liability under or in connection with the Terms shall not exceed the Fees charged or chargeable in the 12 months prior to the occurrence of the event giving rise to the liability in question.
- 9.4. We will not be liable to you in respect of any defamation or breach of the British Codes of Advertising and Sales Promotion, the Data Protection Act 1998 or the Privacy and Electronic Communications (EC Directive) Regulations 2003 arising from the use of the Input Material in the Project or otherwise in the provision of the Services or creation of the Deliverables and you will indemnify us against any loss, damages, costs, expenses or other claims arising from any such defamation or breach. We will not process any personal data (as defined by the General Data Protection Regulation) on your behalf unless and until we have agreed the terms of a suitable data processing agreement with you.
- 9.5. Unless otherwise stated in the Proposal, we don't promise that the Deliverables will be suitable for use by all or any persons with disabilities and we will not be deemed to be in breach of our obligations because of any such non-suitability. If you want the Deliverables to be suitable for use by persons with disabilities, you must tell us this before the Project begins and to specify your precise requirements in full and in writing in those respects so that they can be recorded in the Specification or otherwise in the Proposal. Those requirements may effect our ability to deliver the Services in accordance with the Proposal should we receive them after the Contract has been agreed, in which case they will constitute a change request for the purposes of clause 3.2. Regardless of the nature of the Services that we are to deliver, you remain responsible for ensuring that the Deliverables complies with the Disability Discrimination Act 1995 and you will indemnify us against any loss, damages, costs, expenses or other claims arising from any breach of that Act or any regulations made under it or relating to it.
- 9.6. Nothing in these Terms shall operate so as to exclude or limit our liability for fraud or fraudulent misrepresentation, for death or personal injury arising from our negligence or for any other liability for which it would be unlawful for us to exclude or limit.
- 9.7. All indemnities that we give under these Terms are provided on the basis that:
- 9.7.1. You give notice to us of the circumstances giving rise to any such indemnity as soon as you become aware of the same;

- 9.7.2. You provide us with sole conduct of the defence to any claim or action in respect of any infringement or other issue giving rise to the indemnity and you do not at any time admit liability or otherwise attempt to settle or compromise the claim or action except upon our express instructions;
- 9.7.3. You act in accordance with our reasonable instructions including providing us with whatever assistance we might reasonably require in respect of the conduct of the defence of the claim including the preparation of any court documentation or the attendance at any court hearings; and
- 9.7.4. The claim or action giving rise to the damages (including legal costs) awarded to or agreed with the third party does not arise from your breach of any part of clause 6 above.

**10. General**

- 10.1. We won't be liable for any failure to deliver or delay in delivering the Services caused by reasons that are beyond our reasonable control.
- 10.2. Even though we may not insist on your compliance with an obligation on you under these Terms at any given time, we may still require you to comply with that obligation in future or to correct your non-compliance.
- 10.3. Nothing in the Terms shall confer on any third party any benefit whatsoever or the right to enforce any term of any contract to which these Terms relate and the Contract (Rights of Third Parties) Act 1999 shall not apply.
- 10.4. Leaving aside to any other rights we might have, either under these Terms or otherwise, we may terminate the Contract or, notwithstanding any previous agreement or arrangement to the contrary, suspend any further delivery without liability to you and where the Deliverables has been delivered but not paid for the price shall become immediately due and payable if:
  - 10.4.1. you make any voluntary arrangement with your creditors, or
  - 10.4.2. (being an individual or firm) become bankrupt, or
  - 10.4.3. (being a company) become subject to an administration order (whether out of court or otherwise), or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or an encumbrancer takes possession of or a receiver or administrator is appointed over any of your property or assets, or
  - 10.4.4. you cease to trade or threaten to cease trading.
- 10.5. If a court or other authority decides that any provision or part-provision of the Contract is invalid, illegal and/or unenforceable then the provision or part-provision in question will be deemed to have been deleted and the validity of the rest of the Contract will be unaffected. If it is possible to make the provision or part-provision in question valid, legal and/or enforceable if some part of it were deleted, the provision or part-provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 10.6. The Contract shall in all respects be determined and governed by English law. Both we and you submit to the exclusive jurisdiction of the English courts.