

## Talking Design Limited - Standard Terms and Conditions

### 1. Definitions

In these terms and conditions:

- (i) the "Company" means Talking Design Ltd., 5 Liverpool Terrace Worthing West Sussex BN11 1TA
- (ii) the "Customer" means any person, partnership or company at whose request work is performed or goods are supplied.
- (iii) "Price" means the amount due from the Customer to the Company in respect of work performed or Goods supplied by the Company to the Customer;
- (iv) "Goods" means any goods the Company is to supply to the Customer;
- (v) headings are for convenience only and are not to be used in their interpretation;
- (vi) words importing any one gender shall include all other genders; words importing the singular number shall include the plural number also and vice-versa; and words importing persons shall include corporations and firms.

### 2. Conditions applicable

(i) These terms and conditions of sale shall apply to all contracts where the Company undertakes work for the Customer and/or where Goods are to be supplied by the Company to the Customer to the exclusion of all other terms and conditions.

(ii) No variation of these terms and conditions of sale shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

**3. Price Variation.** Estimates are based on current costs of materials and labour unless otherwise agreed in writing, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.

**4. Preliminary Work.** All work carried out, whether experimentally or otherwise, at a Customer's request shall be charged to the Customer unless otherwise agreed in writing before work is started.

**5. Copy.** Where copy supplied to the Company is not clear and legible or where changes are made by or on behalf of the Customer beyond the Company's control a charge may be made by the Company to the Customer to cover any additional work involved.

**6. Proofs.** Proofs of work may be submitted for a Customer's approval but the Company shall incur no liability for any errors not corrected by the Customer in proofs submitted. A Customer's alterations and additional proofs necessitated thereby shall be charged extra.

### 7. Price, Delivery and Payment

(a) The Price quoted shall be the Company's price. All Prices quoted are valid for 30 days only or until earlier acceptance by the Customer after which time the Company may alter them without giving notice to the Customer. The Price is exclusive of VAT, which shall additionally be due from the Customer to the Company at the rate ruling on the date of the Company's invoice.

(b) The risk in the Goods shall pass to the Customer as from delivery.

(c) Work undertaken or Goods delivered shall be invoiced when delivered or, if earlier, upon notification to the customer that the work has been completed or that the Goods are ready for delivery. Where work undertaken is part complete at the end of any calendar month, the Company reserves the right to invoice work that has not previously been charged for at that date. Work undertaken or Goods delivered to the Customer are deemed to be accepted upon receipt by the Company of an acceptance document signed by the Customer or seven days after delivery if the Customer has not given any written notice of non-acceptance, whichever is the sooner. Payment for work undertaken or Goods delivered is due within 30 days of the Company's invoice. Time of payment shall be of the essence.

(d) Unless otherwise specified the price quoted excludes delivery of the work or Goods to the Customer's address or any other address.

(e) Should expedited delivery be agreed an extra fee may be charged to cover any overtime or any other additional costs involved.

(f) Should work be suspended at the request of or delayed through any default of the Customer for a period of 30 days the Company shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs at the standard rates of the Company therefore from time to time prevailing.

(g) The Company reserves the right to charge interest at the rate of 1% per month or part month on any balances overdue for payment.

**8. Print Quantities.** Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5 per cent for work in one colour only and 10 per cent for other work, being allowed for overs or shortages.

**9. Claims.** Notice of damage, delay or partial loss of Goods in transit or of non-delivery must be given in writing to the Company and the carrier within 3 clear days of delivery, (or, in the case of non-delivery within 28 days of despatch of the goods) and any claim in respect thereof must be made in writing to the Company and the carrier within 7 clear days of delivery (or in the case of non-delivery within 42 days of despatch). All other claims must be made in writing to the Company within 28 days of delivery. The Company shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Customer proves that:

- (i) it was not possible to comply with the requirements; and
- (ii) notice (where required) was given and the claim made as soon as reasonably possible.

### 10. Liability

(a) In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price.

(b) (i) The Company shall not be liable for any loss or damage whatever owing to failure by the Company to deliver the Goods (or any of them) or any work undertaken by the Company for the Customer promptly or at all.

(ii) Notwithstanding that the Company may have delayed or failed to deliver the Goods (or any of them) or any work undertaken by the Company for the Customer promptly the Customer shall be bound to accept delivery and to pay for the Goods or the work concerned in full provided that delivery shall be tendered at any time within 3 months of the agreed delivery date.

(c) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition, or other term, or any duty at common law, or under the express terms of any contract, for any indirect, special or consequential loss or damage (whether for loss or profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with any work undertaken by the Company or the supply of the Goods or their use or resale by the Customer, and the entire liability of the Company under or in connection with the contract shall not exceed the Price of the Goods, except as expressly provided in these terms and conditions.

### 11. Standing Material

Artwork, illustrations, transparencies, computer files and all other materials owned by the Company and used by the Company in the production of film negatives, positives and the like shall remain the Company's exclusive property. Such items when supplied by the Customer shall remain the Customer's property.

### 12. Customer's Property

(a) Customer's property and all property supplied to the Company by or on behalf of the Customer shall while it is in the possession of the Company or in transit to or from the Customer be deemed to be at Customer's risk unless otherwise agreed in writing and the Customer should insure accordingly.

(b) The Company shall be entitled to make a reasonable charge for the storage of any Customer's property left with the Company before receipt of the order or after notification to the Customer of completion of the work.

### 13. Company's Property

(a) In spite of delivery having been made property in any Goods shall not pass from the Company until:

(i) the Company shall have been paid the Price plus VAT in full; and

(ii) no other sums whatever shall be due from the Customer to the Company.

(b) Until property in the Goods passes from the Customer in accordance with clause (a) the Customer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Customer shall store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

(c) Notwithstanding that the Goods (or any of them) remain the property of the Company the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until property in the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.

(d) The Company shall be entitled to recover the Price plus VAT notwithstanding that property in any of the Goods has not passed from the Company.

(e) Until such time as property in the Goods passes from the Company the Customer shall upon request deliver up to the Company such of the Goods as have not ceased to be in existence or resold to the Company. If the Customer fails to do so the Company may enter upon any premises owned, occupied or controlled by the Customer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Customer under clause 13(c) shall cease.

(f) The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Customer does so all sums whatever owing by the Customer to the Company shall forthwith become due and payable.

(g) The Customer shall insure and keep insured the goods to the full Price against "all risks" to the reasonable satisfaction of the Company until the date that property in the goods passes from the Company, and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Customer fails to do so all sums whatever owing by the Customer to the Company shall forthwith become due and payable.

### 14. Intellectual Property.

(a) No right or licence is granted to the Customer under any patent, trademark, copyright, registered design or other intellectual property right except the right to use or resell the Goods.

(b) The Customer agrees that any copyright and/or unregistered design right arising in pursuance to any work undertaken by the Company on behalf of the Customer or any Goods produced shall be owned by the Company.

(c) Where any designs, specifications or other material have been supplied by the Customer to the Company then the Customer warrants that the use and/or possession of those designs, specifications or other material or supply of the Goods do not infringe the rights of any third party and do not contain any illegal or defamatory matter. The Customer will indemnify and keep indemnified the Company against any and all liability (including without limitation legal costs) arising out of any claim:

(i) of infringements or alleged infringements of any such third party; or

(ii) that such designs, specifications or other material contain illegal or defamatory matter.

**15. Force Majeure.** The Company shall under no liability if the Company is unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, theft, drought, failure of power supply, lock out, strike or other action taken by the Company's 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 contingency the Customer may give written notice to the Company to elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

**16. Insolvency.** If the Customer fails to make payment in accordance with these terms or conditions or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrative receiver or manager shall be appointed over the whole or any part of the Customer's business or assets or if any petition for the appointment of an administrator is presented against the Customer or if the Customer shall suffer any analogous proceedings under foreign law all sums outstanding from the Customer to the Company shall become payable immediately. The Company may in its absolute discretion and without prejudice to any other rights, which it may have:

(i) suspend all future deliveries of goods to the Customer and/or terminate the contract or any other work being carried out for the Customer without liability on its part;

(ii) exercise any of its rights pursuant to clause 13;

(iii) charge for any work already carried out (whether completed or not) and materials purchased for the Customer such charge to be an immediate debt due to the Company; and

(iv) in respect of all unpaid debts due from the Customer have a general lien on all goods and property in the Company's 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 the Company thinks fit and to apply the proceeds towards such debts.

### 17. Internet Services

The Company may provide Internet Services in the form of web hosting, database hosting, email hosting, domain name management and other related services. Where these services are provided, the following terms shall apply in addition to the applicable terms herein.

a) General. Unless agreed in writing to the contrary, the services provided will be subject to occasional maintenance work; as a result, the Company cannot guarantee that services are available 100% of the time. Whilst the Company will use its best endeavours to provide service without interruption, a service level of 98% in the year will be deemed as acceptable.

The Customer must provide written instructions of all additions or changes to internet services provided by the Company. Emailed instructions will be acceptable. All services are offered on an annual basis.

Where a Customer orders services but chooses to use them for a shorter period, the full charges will still be payable. All services will be automatically renewed unless written instructions are received from the Customer more than 30 days before the renewal date. Unless specifically agreed otherwise, Internet Services must be paid in advance. New services must be paid for before services can be provided.

Renewal services must be paid for at least 30 days before the services are due for renewal. The Customer is responsible for keeping copies of all data on websites, databases and mailboxes. The Company cannot be held responsible for losses of data, and its liability cannot exceed the value of service provided. Customers requiring access to websites or databases for backup purposes should request login and password details from the Company. Many services require the use of user id and password to gain access. The Company reserves the right to enhance the security of its services and so require the Customer to use more complex passwords.

b) Domains. The Company offers a service to register, renew and maintain domain names.

i) Registration, renewal and transfers. When registered, domain names are subject to minimum registration periods depending on the type of domain. The Customer must also provide clear information, as required by the domains registry, when purchasing domains. In most cases, domains can be purchased for periods longer than the minimum. Customers should be aware of the legislation relating to domains when making a purchase. Domains can be transferred to our registrar free of charge, but may need to be renewed as part of the transfer process. We reserve the right to charge a fee to transfer domains out to another registrar.

ii) Other services. Alteration to DNS records and other services can be provided on domains registered by ourselves. Where the Customer has registered the domain with another registrar, we can usually provide DNS services by either (a) being given the control panel credentials for the domain, or (b) having the domain transferred to our registrar. In all cases fees will be charged on a time and materials basis.

c) Web and Database Hosting. The Company offers services to host websites on both Windows and Linux servers, as well as providing MySQL and Microsoft SQL Server database services on the internet. A range of add-on services (e.g. PHP, PERL, ASP) are also available, but before ordering web hosting the Customer must check that all services they require are available. Some services attract fees which will be specified before the services are added. Services are also priced based on capacity; standard websites are 50Mb and MySQL databases are 150Mb. Extra storage capacity will attract extra fees, and will be automatically renewed along with other services.

d) Email. The Company offers a variety of email services. These services comprise different types of mailbox per user, individual mail forwarders and blanket forwarders ('catch all' forwarders). All mailboxes can be accessed via an internet browser and use Outlook 2010 OWA as the webmail client. Maximum attachment size 5Mb.

i) Standard mailbox services offer a 100Mb mailbox with POP3 and IMAP access but do not offer outgoing mail services; these need to be provided by the Customers Internet Service Provider (ISP). Junk mail filtering and virus checking must be done by the Customer using their email client. The webmail client offers a contacts folder but this cannot be integrated with any other client. Maximum attachment size 15Mb.

ii) Advanced mailbox services offer a 1Gb mailbox with POP3 and IMAP access. Included are outgoing mail services using our SMTP servers, junk mail filtering and virus checking on our servers. The webmail client offers a contacts and calendar folder but this cannot be integrated with any other client.

iii) Exchange mailbox services offer a 5Gb mailbox with full Microsoft Exchange integration, as well as POP3 and IMAP. This includes outgoing servers, junk mail filtering and virus protection. Also includes contacts, calendars, reminders etc. all of which are accessible with multiple clients (including smart phones) and a full Outlook OWA client. Maximum attachment size 25Mb.

iv) Individual forwarders will redirect email for a specific email address to another designated email address.

v) 'Catch all forwarders' will redirect all mail that does not already have a specific mailbox to another designated email address.

**18. Cancellation.** The Company may cancel this contract at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall promptly repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

**19. Variation.** No variation to these terms of contract shall be made unless agreed in writing by the Customer and the Company prior to any work being undertaken.

**20. Law.** These conditions and all other express terms of the contract shall be governed and construed in accordance with the Laws of England.