

## **TERMS OF CONTRACT: Brainstorm Design Consultants Limited**

1. Having received a brief of requirements from The Client, either verbal or written, Brainstorm Design Consultants Limited will produce a quotation detailing the work to be carried out. The Client must provide written or verbal confirmation that the quotation is acceptable by signing and returning a copy of the quotation or verbally agreeing to cost or by other means agreed by both parties. This will effectively form the basis of the contract.
2. This agreement constitutes the entire agreement between Brainstorm Design Consultants Limited and The Client. In making this agreement each part confirms that they have not relied on any inducement not recorded in this agreement.

### **COPYRIGHT AND CONTENT**

1. The Client MUST own copyright, or have reproduction rights, of all artwork, trade names, photographs, and other materials reproduced in The Client's project. The Client shall indemnify Brainstorm Design Consultants Limited against any costs whatsoever in connection with the ownership of copyright or reproduction rights. The Client shall have full liability for the consequences of the contents of the printed literature, website or other project commissioned.
2. The Client's logos, artwork, graphics and photographs remain the copyright of The Client. Design, graphics and programming produced by Brainstorm Design Consultants Limited remain the intellectual property of Brainstorm Design Consultants Limited (unless other agreements are made and full and final payment has been received).
3. All preliminary work carried out at The Clients request, whether experimentally or otherwise, shall be charged to The Client.
4. Brainstorm Design Consultants Limited withholds the right to refuse publication of any content which it sees as being indecent, obscene or offensive towards others.
5. Proofs of all printed work may be submitted for The Client's approval and Brainstorm Design Consultants Limited shall not be liable for errors not corrected by The Client in such proofs. The Client's alterations and additional proofs necessitated thereby shall be charged as additional charges. When style, type or layout is left to the judgement of Brainstorm Design Consultants Limited, changes thereafter made by the Client shall be charged as additional charges. No responsibility will be accepted for any errors, including colour variations, in proofs approved by The Client.

### **WEB SITE AND GENERAL DESIGN**

1. Brainstorm Design Consultants Limited will provide a design proof for The Client's approval. The design copyright of the proof shall remain the sole property of Brainstorm Design Consultants Limited. Use of the design in any respect without the express written or verbal permission of Brainstorm Design Consultants Limited will constitute breach of copyright.
2. Brainstorm Design Consultants Limited will complete the design and build of The Client's web site or other material after receiving confirmation that the design proof is satisfactory.
3. Brainstorm Design Consultants Limited will release Web Site code only and graphics when payment of the final invoice for the outstanding quotation value is received in full. Other material including artwork, photography and intermediate materials will remain the property of Brainstorm Design Consultants Limited. These items may be held or disposed of by Brainstorm Design Consultants Limited.
4. Once Brainstorm Design Consultants Limited have received written or verbal confirmation that the design proof is satisfactory, modifications to the design specification will be considered an amendment to the contract. All modifications must be confirmed in writing.
5. Our consultancy service and general advice is, by its nature, subjective. It is up to The Client whether they decide to follow our ideas and suggestions. We cannot guarantee that any of those ideas and suggestions will increase traffic to The Client's web site, improve ratings with search engines or boost sales.

6. The Client's supplied code will remain the copyright of the Client. Design, graphics and programming produced by Brainstorm Design Consultants Limited remain the intellectual property of Brainstorm Design Consultants Limited although the company will provide full access to the source code. Some parts of the software code may also be the intellectual property of others licensed for use in the source code (unless other agreements are made and full and final payment has been received).

#### **DOMAIN NAME REGISTRATION AND WEBSITE HOSTING**

1. Brainstorm Design Consultants Limited will register domain names in The Client's name. In doing this, Brainstorm Design Consultants Limited are acting as The Client's agent with the appropriate Naming Authority. The contract of registration is between The Client and them and The Client is bound by their terms and conditions (available on request).
2. Registration is for the period agreed by The Client. Although we will do our best to renew the registration for you, it is ultimately your responsibility to make sure this happens so please keep a note of the renewal date.
3. Brainstorm Design Consultants Limited will advise The Client on the most appropriate and cost-effective web site hosting package supplied by a third party. The website hosting contract is between The Client and the hosting company and The Client is bound by their terms and conditions (available on request).
4. The Client takes the risk in connection with the solvency and performance of such third parties and The Client accepts that the third party has sole liability to provide such services.

#### **INSURANCE**

The Client shall be responsible for effecting all necessary insurance in respect of any loss, damage, or expense that it may suffer directly or indirectly in relation to the provision or non-provision of Brainstorm Design Consultants Limited goods and services.

#### **FORCE MAJEURE**

Brainstorm Design Consultants Limited shall not be liable for any delay or failure to perform any of its contractual obligations as a result of war, flood, storm, riot, fire, accident, civil commotion, acts of god, government action, failure of power supply, equipment failure, lock out, strike, default or failure of subcontractor or suppliers or any other cause beyond its reasonable control and Brainstorm Design Consultants Limited shall not be liable for any loss, damage or expense suffered by The Client or any third party arising directly or indirectly from any such matters.

#### **INVOICING, PAYMENT AND TENDER VALIDITY**

1. Payment shall be made in UK pounds sterling to Brainstorm Design Consultants Limited. Payments are due within 20 days of presentation of invoice. In the event that any amount remains unpaid 30 days after invoice date, Brainstorm Design Consultants Limited reserves the right to discontinue, withhold, or suspend services to The Client to whom such unpaid amounts relate.
2. In accordance with the Late Payment of Commercial Debts Act 1998 interest will be charged on all payments received outside of payment terms at the rate of 2% above Barclays Bank plc base rate. All charges incurred by Brainstorm Design Consultants Limited due to late payment or cheques that require representing or fees required to recover debts will be passed onto The Client.
3. Once Brainstorm Design Consultants Limited has undertaken a commission for services, a cancellation fee of up to 75% will apply if the contract is terminated through no fault of Brainstorm Design Consultants Limited. An interim invoice will also be levied for up to 75% of the total quotation value if the commissioned project's content is not received within 60 days of commission.

## **DISCLAIMER**

1. Brainstorm Design Consultants Limited cannot be held liable for any information contained within The Client's web site or printed literature. The content of such remains the copyright and intellectual property of The Client. The Client is liable for any reasonable legal costs incurred by Brainstorm Design Consultants Limited caused by the content of The Client's web site or other project and agrees to indemnify Brainstorm Design Consultants Limited for any awards made by a court of law.
2. Search Engine entry and ranking can in no way be guaranteed as this remains the sole discretion of a third party search engine provider.
3. No liability will be accepted for compatibility issues with code or any errors, omissions or failings of software code produced.
4. Where in the instance that a time scale/schedule has been given, Brainstorm Design Consultants Limited will not be responsible for any money lost to The Client if the deadline is not met.
5. On completion of any web site it is the sole responsibility of The Client to manage the site. Brainstorm Design Consultants Limited will no longer be responsible for the site upon completion unless an alternative agreement has been reached.
6. Should Brainstorm Design Consultants Limited waive any of these terms on an individual basis, this shall not affect the validity of remaining clauses or commit Brainstorm Design Consultants Limited to waive the same clause on any other occasion.
7. This contract shall be subject to English Law. Where it is held that Brainstorm Design Consultants Limited is not entitled to rely on any term in this contract, then Brainstorm Design Consultants Limited may also be allowed to cancel all rights and obligations under this contract, or to hold all other clauses as valid entirely at their sole discretion.
8. Brainstorm Design Consultants Limited reserves the right to amend these terms and conditions at any time.

## **SUBMISSION OF INFORMATION AND DATA PROTECTION**

1. Any information submitted to Brainstorm Design Consultants Limited shall be used by Brainstorm Design Consultants Limited in accordance with the Data Protection Act 1998.
2. Any visitor who provides information warrants that the information provided is complete, true and accurate in all respects.
3. We will use your information and the subsequent information we collect about you, to create a database. This database and the information it contains will be used by Brainstorm Design Consultants Limited for the purpose of sales communications and held on account management database to enable to contact you and hold information about projects past and present plus estimates we may produce for you. We may also send you sales and other information which we think may be of interest to you in the future.
4. By responding to our subsequent enquiries you are deemed to consent to our processing personal data about you and your company where necessary for the above purposes, including the processing of any personal data about you.
5. If you do not want to receive any information from either us or third parties, tell us when you next contact us.
6. If you wish to receive a copy of the information we hold about you, write to us.