

TERMS AND CONDITIONS

Studio Roso
13 Hague Street
E2 6HN London
United Kingdom

info@studio-roso.com
+44 (0) 208 133 3262

These conditions set out the terms upon which Roso agrees to provide professional services to clients. Unless Roso agrees to the contrary in writing the service shall be supplied on this basis. Roso will agree reasonable modifications to these terms but such agreement must be in writing and cannot be inferred from a course of behaviour.

1. SCOPE OF CONTRACT

a. Roso supplies you ("the Client" which expressions include your employees professional advisors contractors sub contractors suppliers and agents) with the design services (usually involving interior design, architectural design public art exhibition design product design interaction design) and general design services together with project co ordination and procurement services ("the Service") usually for a specific period ("the Project") more particularly described in the fee proposal ("the Fee Proposal").

b. Roso will on request pitch for such work (a "Pitch") but in the event of an unsuccessful Pitch the Client will not use any designs documents concepts ideas or information provided as part of the Pitch ("Pitch Material") and will return all Pitch Material to Roso.

c. If the Client shall have any complaint about the quality of the Service or goods provided then notice shall be given to Roso within 7 days of delivery. In the absence of such notification the Client shall be deemed to have accepted the supply.

2. CLIENT'S DUTY TO PROVIDE INFORMATION

a. The Client shall be solely responsible for providing Roso with all necessary information concerning its goods/services, the Service (including the scope of use required), the market, planning considerations and generally. Roso shall not be responsible for any shortcomings in such information. The Client accepts that its knowledge and experience in its industry sector and the manufacture processing and packaging of its goods/services is vital in this regard.

b. The Client shall be responsible for providing all necessary permissions, licenses and consents which may be required for the provision of the Service unless Roso has expressly agreed in writing to do so.

c. Roso will accept and act upon instructions communicated to it by any means by the Client and/or its representatives, agents or authorised persons and is not obliged to seek verification of such instructions.

d. Roso cannot guarantee that emails sent to it or its agents or representatives will be received and all critical communications should be sent or confirmed by personal delivery, post or fax.

e. The Client shall be solely responsible for the provision of all information required by Roso in order for it complete the Service.

3. DELIVERY

The delivery times of the Service stated by Roso are reasonable estimates and Roso shall not be responsible for any delay that is not directly attributable to the fault of Roso.

4. PROCUREMENT

a. Normally Roso will procure any fabrications, furniture, fittings, fabrics, leathers, materials and finishes (the "Furnishings") as part of the Service. This procurement is separate from the Contract Price and items are charged to the Client inclusive of the handling charge 17.65% but exclusive of VAT and local tax.

b. The Client understands that the Furnishings are often custom made which may result in variations between individual items produced to the same design and therefore an exact match to a sample cannot be guaranteed.

c. Roso shall inform the Client of any costs provided by suppliers for the Furnishings. All costs will be in the form of an estimate and may be subject to change.

d. The Client agrees that if he wishes to procure his own Furnishings then Roso will have a reasonable right to approve them and will charge a reasonable approval fee.

e. Provided that Roso have received relevant assurances and given appropriate specifications it will not be responsible for any complaints arising from the performance of any items or materials used in relation to the Project.

f. Unless agreed to the contrary the Service does not include the provision of contractors and sub-contractors (as distinct from freelancers and other firms engaged by Roso otherwise than upon the direction of the Client in relation to the provision of the Service) and the Client will be solely responsible for all matters concerning contractors and subcontractors and shall indemnify Roso there from and shall take reasonable steps to ensure that they comply with these conditions and fully co-operate with Roso.

5. FURNISHINGS/ FABRICATIONS

a. If the Contract does include procurement then Roso will (based on the Client information) advise on and procure the Furnishings that Roso considers are appropriate for the Services.

b. Roso assigns to the Client the benefit of all contractual and implied warranties and guarantees relating to procured Furnishings and Roso shall have no further liability whatsoever in relation to any defects in such Furnishings.

c. Subject to the above, the Client shall inspect the Furnishings procured as part of the Services and provided the Client notifies Roso within 7 days from delivery / completion then Roso will try to persuade the supplier to remedy any defect provided the Client has used the Furnishings in accordance with the manufacturers or suppliers recommendations.

6. CONTRACT PRICES/TITLE

a. For the supply of the Service the Client shall pay to Roso the total of the fees as stipulated in the Fee Proposal and other documents and correspondence ("the Contract Price").

b. Any estimate of the whole or any part of the Contract Price shall remain valid for 3 months and is given in good faith and shall be treated as an estimate only and all errors and omissions shall be excepted.

c. The due date for payment shall be the date of the invoice.

d. Payment of the Contract Price shall be made in pounds sterling within 30 days of the date of invoice ("the Final Date for Payment") and without any set off or counterclaim (save where such claim is based on fraud). Roso shall be entitled to charge interest on overdue sums thereafter at the rate of 4% per annum above the base rate for the time being of its bank.

e. The Client may not withhold payment of any part of the Contract Price or any other monies due to Roso, by reason of claims or alleged claims against Roso unless the amount to be withheld has been agreed by Roso as due to the Client or has been awarded in arbitration or litigation in favour of the Client in relation to the same project and save as aforesaid all rights of set-off at common law or equity are excluded.

f. Roso will charge at its current rate for additional work necessitated by reason of corrections or modification or charges required after work has been approved by the Client (to include Client led changes to critical path and alterations to style).

g. Title to or license to use any property or intellectual property forming part of the Service shall pass to the Client when and only when the full Contract Price for the Service has been paid.

h. Roso may ask the Client to make a payment on account of the Contract Price and any disbursements to be incurred. If Roso hold money on account they will be entitled on delivery of any invoice to the Client apply that money in payment or part payment of the invoice. Alternatively Roso may require the invoice to be settled with new funds, in which case Roso will hold the money on account as security for future fees and disbursements.

i. All monies payable by the Client to Roso must be paid free from all taxes, levies and charges (including bank charges). If any deductions or withholdings are required by law or made by any third party the Client must pay to Roso such sums as will leave Roso with the amount they would have been entitled to receive in the absence of such deductions or withholdings.

j. Where the Contract is quoted in stages then each such stage shall be under these conditions and Roso shall be entitled to be paid 50% of the estimated Contract Price for each stage in advance including Furnishings procured and any work/variations that have been carried out at the request of the Client.

k. For new business, Roso may, at its discretion; invoice up to 50% of the total estimated fees and/or costs in advance and will not commence work until this has been settled.

l. Roso reserves the right to withhold final delivery of work until all of its fees and expenses have been settled in full.

m. Roso reserves the right to retain property belonging to a client as has been provided for the purpose of the Project and/or any materials produced for the Client as part of the Service whilst any part of the Contract Price is outstanding

n. Unless agreed otherwise in writing the Contract Price will make provision for up to 2 sets of reasonable and minor author corrections and further corrections shall be charged for as additional work.

o. All approved third party cost will be invoiced prior to commissioning and Roso reserves the right to wait until such costs have been paid before commencing work.

p. Where an estimate is given for build or procurement costs these are based upon reasonable assumptions and current price knowledge in the industry and Roso shall not be responsible for any subsequent variation thereof.

7. INTELLECTUAL PROPERTY

a. The copyright of Roso and/or its subcontractors in literary musical and artistic work (including specifications, designs, drawings, illustrations, texts, scores, photographs, films and music whether stored or displayed physically or electronically and on whatever medium) and design right in designs and goods ("the Intellectual Property") forming part of the Service belongs to Roso and is hereby asserted and the Client is licensed to use Intellectual Property for the purposes of the contract under which it was supplied only.

b. Reservation of Technical and Artistic Concepts

Roso will not infringe the Final Graphic Design or Final 3-D Design but reserves exclusive right to use all other designs software concepts ideas or intellectual property developed during the course of the Service.

c. Multi Designs

If more than one design is chosen by the Client and this was not provided for in the agreed brief for that Service an additional fee may be payable by the Client.

d. Sub-contractors Intellectual Property

(i) Roso will use all reasonable endeavours to secure the relevant intellectual property rights of its sub-contractors.

(ii) Clients are reminded that illustrators usually retain ownership of the original illustration and may demand its return undamaged although this should not restrict the Client's use of any illustration within the negotiated usage rights.

e. Originality

Roso warrants that its own design work is original and that it will not knowingly or negligently infringe the rights or intellectual property of a third party but (unless expressly agreed to the contrary) it is under no obligation to make any enquiry in this respect and it shall have no liability to the Client in respect of any infringement or alleged infringement of intellectual property or passing off.

f. Further Assurance

Roso will on demand and at the cost of the Client execute such documents and do such things as are necessary to give effect to this clause.

8. CLIENT MATERIALS

Where the Client supplies Roso with work or materials of any description for use in connection with the Project the Client warrants to Roso that such items belong to it and that it has the necessary intellectual property rights therein. The Client indemnifies Roso against all costs claims and liabilities if this is not the case.

9. CDM

a. Roso shall comply with all obligations imposed on them by the CDM Regulations in its capacity as a "Designer" in relation to the Project.

b. The Client shall comply with all obligations imposed on the Client by the CDM Regulations in its capacity as the "Client" in relation to the Project.

10. DUTY OF CONFIDENTIALITY

Each party will use its best endeavours to preserve the confidential information of the other and will comply with the other's reasonable requirements in this regard. The Client recognises that Roso's methods of working and pricing structures are proprietary and are not generally in the public domain.

11. CLIENT'S RESPONSIBILITY FOR IMPLEMENTATION

a. In the case of graphic designs full responsibility for implementation, display, electronic integration and compatibility, back up, production and manufacture of the Service shall remain with the Client.

b. In the case of three dimensional designs:-

(i) Subject to Clause 2 above, Roso will advise on implementation based upon normal production methods and techniques.

(ii) Proposals for implementation of the Service are based upon the information provided by the Client and no warranty or representation is given concerning performance of any packaging.

c. Roso is not responsible for the production of packaging, full responsibility for which remains with the Client.

d. The Client shall indemnify Roso in respect of any claim howsoever arising under consumer protection or other legislation other than due to a default of Roso.

e. Failure to consult Roso on implementation may result in unsatisfactory implementation.

f. In the case of electronically displayed designs Clients are reminded that they may need to obtain relevant licenses for proprietary software, and once the final electronically displayed design has been shown the Client must then inform Roso of all final required alterations within 7 days and upon completion of them the design will be deemed to have been accepted.

12. LIMITATION OF LIABILITY

a. The liability of Roso under the Contract or in tort (other than in respect of death or personal injury) shall not exceed the greater of the sums paid by the Client under the contract or such sum as shall be receivable by Roso in respect of any claim under any insurance policy effected by Roso from time to time. Roso warrants that it maintains insurances and that the cover is better if these conditions apply.

b. Roso shall not be liable for any indirect or consequential loss (including loss of sales/profit, loss of production/goodwill/reputation, or packaging or distribution costs).

c. If the Service includes the provision of subcontractors then Roso will advise on and procure the services of subcontractors who Roso is satisfied are reasonably professionally competent. Roso will not be responsible for any default of any third party or sub-contractor, manufacturer or supplier but will give all reasonable assistance to permit the Client to enforce its rights against them to include assigning all of rights to the Client.

d. Where an error is found in delivered work that is the responsibility of Roso then the liability of Roso shall be limited to correcting or replacing (as appropriate) the work.

e. Roso warrant that it maintains such insurances as are reasonable and normal in its industry.

f. The Client accepts reasonable tolerances in relation to the Service and the Furnishings including in respect of, inter alia, paper, quality and colour.

g. Roso shall not be responsible for any errors apparent in artwork, copy or proofs that have been signed off by or on behalf of the Client.

h. Roso shall not be responsible for any failure to perform the Services which is attributable to matters outside of its reasonable control.

i. Where as part of the Service Roso acts as lead consultant and as contract administrator Roso will assist the Client as reasonably required in resolving any dispute or claim which may arise between the Client and / or member

of the design team and / or a contractor, provided that this obligation will not extend to carrying out a detailed examination of a financial claim or participating in or giving substantive advice to the Client in relation to any adjudication, arbitration or litigation proceedings. Should Roso be requested to participate in this way then the time spent will be charged for in accordance with its correct rates at the time.

13. CANCELLATION OF CONTRACT

a. The Client shall be entitled to cancel the Service at any time upon 30 days notice and thereupon shall immediately pay to Roso all fees due up to cancellation and all disbursements, which cannot be cancelled.

b. Following cancellation and subject to the payment to Roso of all sums due the Client shall be entitled to select and will receive title and intellectual property rights in accordance with clause 7 in one of the designs that have been presented to the Client prior to the date of termination.

c. Roso shall be entitled to terminate the Contract if any part of the Contract Price (on any work being undertaken for the Client) is outstanding (but not formally disputed) 7 days after the Final Date for Payment or if the Client shall go into liquidation, receivership or equivalent (or if proceedings are issued in relation thereto) or if it shall enter into an agreement with its creditors.

14. PUBLICITY AND EXAMPLES

a. Once the Service is in the public domain Roso shall have a right to reasonable publicity.

b. Roso hereby reserves and asserts all moral rights.

15. RESTRICTIONS

a. The Client agrees that whilst Roso is providing Services to it and for a period of six months thereafter it shall not:

(i) Approach any of the employees of Roso regarding the possibility of them providing services directly to the Client independent of Roso.

(ii) Engage or employ or offer to engage or employ an employee or former employee (being a person who has been an employee of Roso in the previous six months) for the provision of services that Roso are capable of providing.

(iii) Contract directly with any subcontractor of Roso who have been associated with the provision of the Services to the Client.

16. LEGAL

a. The Contract shall be subject to English Law and under the non-exclusive jurisdiction of the English Courts.

b. A person who is not a party to this contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of third party which exists or is available independent from that Act.

c. This Agreement is personal to the parties hereto and neither party may assign without the prior written permission of the other.

d. The Contract shall be subject to English Law and under the non-exclusive jurisdiction of the English Courts.

e. Any of these provisions which may be unenforceable shall (to that extent) be severable

f. Any dispute arising out of this contract may be referred by either party to Adjudication. The Adjudicator shall be a person to be agreed between the parties, or in absence of such agreement and on the application of the party referring the dispute, a person appointed as an Adjudicator by the Chartered Institute of Arbitrators. The Adjudication shall proceed and shall be conducted in accordance with Construction Industry Council Model Adjudication Procedures (as current at the date of the relevant referral) unless otherwise agreed in writing by both parties.

g. No action or proceedings for any breach of these Conditions or Contract (or otherwise arising out of the Service) shall be commenced against Roso after the expiry of 6 years following practical completion of the Project as certified pursuant to the relevant building contract or as otherwise described in the Fee Proposal.

