



## ALEX CHILTON DESIGN

### Terms of Business

Please read these Terms of Business carefully, as they set out our and your legal rights and obligations in relation to our services.

#### 1. Definitions and interpretation

1.1 In these Terms of Business:

“Business Day” means any week day, other than a bank or public holiday in England;

“Business Hours” means between 09:00 and 17:30 on a Business Day;

“Charges” means either the charges specified in the Specification or in their absence the Designer’s Hourly Rate multiplied by the number of person-hours spent by the Designer’s personnel performing the Services payable by the Customer to the Designer, which may be varied from time to time in accordance with Clause [8.7];

“Confidential Information” means:

(a) any information supplied by one party to the other party (whether supplied in writing, orally or otherwise) marked as “confidential”, described as “confidential” or reasonably understood to be confidential; and

(b) the terms (but not the existence) of each Engagement (which information is confidential to each party);

“Customer” means the customer for Services under an Engagement as specified in the Specification;

“Customer Materials” means all works and materials provided by or on behalf of the Customer to the Designer for use in the production of, or incorporation into, the Deliverables;

“Deliverables” means the deliverables specified in the Specification;

“Designer” means Alex Chilton Design Limited, a company incorporated in England and Wales (registration number 5774316) having its registered office at Hurlingham Studios, 1 Ranelagh Gardens, London, SW6 3PA

“Effective Date” means, in relation to an Engagement, the date when the Designer receives a copy of the Specification relating to that Engagement signed by the Customer (such Specification having been previously signed by the Designer and sent to the Customer) providing the signed Specification is received by the Designer within the period of 30 days following the date of signature of the Specification by the Designer;

“Engagement” means a contract between the Designer and the Customer for the supply of Services and the delivery of Deliverables incorporating these Terms of Business and a Specification, and any amendments to such a contract from time to time;

“Force Majeure Event” means an event, or a series of related events, that is outside the reasonable control of the party affected (including power failures, industrial disputes affecting any third

party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

“Hourly Rate” means the Designer’s [standard] hourly labour rate as [specified in the Specification / published on the Designer’s website on the Effective Date / notified by the Designer to the Customer];

“Intellectual Property Rights” means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and the “intellectual property rights” referred to above include copyright and related rights, moral rights, database rights, business names, trade names, trade marks, service marks, passing off rights and rights in designs);

“Services” means the graphic design services supplied by the Designer to the Customer under an Engagement, details of which are set out in the Specification [(or, to the extent that no such details are set out in the Specification, details of which will be agreed between the parties acting reasonably from time to time)];

“Specification” means the specification of services document issued by the Designer to the Customer and signed by or on behalf of each party detailing the scope of the Services and other matters relating to an Engagement; and

“Term” means the term of an Engagement.

1.2 In these Terms of Business, a reference to a statute or statutory provision includes a reference to:

(a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and

(b) any subordinate legislation made under that statute or statutory provision.

1.3 The Clause headings do not affect the interpretation of these Terms of Business.

1.4 In these Terms of Business, “persons” include companies, partnerships, limited liability partnerships, unincorporated associations and trusts.

1.5 The ejusdem generis rule is not intended to be used in the interpretation of these Terms of Business.

#### 2. Engagements

Each Engagement will come into force on its Effective Date and will continue in force until the Services agreed in the Specification have been completed, upon which it will terminate automatically (unless previously terminated in accordance with Clause [13]).

#### 3. Services

3.1 The Designer will supply the Services to the Customer and de-

liver the Deliverables to the Customer in accordance with the terms of each Engagement.

3.2 Any stated or agreed time for delivery of the Deliverables will not be of the essence of the parties' agreement.

3.3 The Designer may sub-contract the provision of the Services without the prior written consent of the Customer; providing that if the Designer does sub-contract the provision of the Services, the Designer will remain liable to the Customer for the performance of the sub-contracted obligations.

3.4 The Designer may suspend the provision of the Services and/or withhold the Deliverables if the Customer fails to pay by the due date any amount due to the Designer in respect of an Engagement.

#### 4. Customer obligations

4.1 The Customer will promptly provide to, or procure for, the Designer any:

- (a) co-operation, support and advice;
- (b) designs, drawings, files, information and documentation;
- (c) third party co-operation; and
- (d) governmental, legal or regulatory licences, consents or permits;

reasonably necessary to enable the Designer to discharge its obligations under any Engagement.

4.2 The Customer must provide feedback on preparatory design work promptly, and in any event in accordance with any timetable agreed between the parties.

4.3 The Customer grants to the Designer a worldwide, royalty-free, non-exclusive licence to use the Customer Materials during the term of an Engagement solely for the purposes of that Engagement.

4.4 The Customer warrants and represents that the Customer Materials, and their use by the Designer in accordance with these Terms of Business, will not infringe the Intellectual Property Rights or other rights of any person, will not be illegal or unlawful under any applicable law, and will not give rise to any cause of action against the Designer or any other person in any jurisdiction.

4.5 The Customer hereby indemnifies and undertakes to keep indemnified the Designer against any losses, damages, claims, obligations, liabilities, costs and expenses (including legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand) arising out of or in connection with any breach by

the Customer of the warranty in Clause [4.4].

#### 5. [Assignment / Licence] of rights

5.1 Upon the later of:

- (a) the completion of the Services under an Engagement; and
- (b) the payment by the Customer to the Designer in full in cleared funds of all amounts due in respect of an Engagement, the Designer will (and hereby does) assign to the Customer all of the existing and future Intellectual Property Rights in the Deliverables, excluding preparatory materials for the Deliverables.

5.2 The assignment in Clause [5.1];

- (a) is for the full term of those Intellectual Property Rights, including all extensions, renewals, reversions, and revivals; and
- (b) includes the right to bring proceedings for any infringement of those Intellectual Property Rights pre-dating their assignment.

#### 7. IPR warranty and indemnity

7.1 The Designer warrants that the use of the Deliverables (excluding the Customer Materials) by the Customer in accordance with the licence granted under the Engagement / the Deliverables (excluding the Customer Materials)] will not infringe the UK Intellectual Property Rights of any third party.

7.2 Subject to the Customer's compliance with Clause [7.3], the Designer hereby indemnifies and undertakes to keep indemnified the Customer against any losses, damages, claims, obligations, liabilities, costs and expenses (including legal fees and costs and expenses incurred in investigating, preparing, defending or prosecuting any litigation, claim, proceeding or demand) arising out of or in connection with any breach by the Designer of the warranty in Clause [7.1].

7.3 The Customer will:

- (a) upon becoming aware of an actual or potential infringement, notify the Designer;
- (b) provide to the Designer all reasonable assistance in relation to the infringement;
- (c) allow the Designer the exclusive conduct of all disputes, proceedings, negotiations and settlements related to the infringement; and
- (d) not admit liability in connection with the infringement or settle any claim without the prior written consent of the Designer.

## 8. Charges and payment

- 8.1 The Customer will pay the Charges to the Designer in accordance with the provisions of this Clause [8].
- 8.2 The Designer may issue an invoice for the Charges to the Customer from time to time during the Term / on or after the dates set out in the Specification / at any time after the relevant Services / Deliverables have been delivered to the Customer.
- 8.3 The Customer will pay the Charges to the Designer within 15 days of the date of issue of an invoice issued in accordance with Clause [8.2].
- 8.4 All amounts stated in the Specification or in relation to an Engagement are exclusive of all value-added taxes, which will be added to those amounts and payable by the Customer to the Designer.
- 8.5 Charges must be paid by bank transfer or by cheque (using such payment details as are notified by the Designer to the Customer from time to time).
- 8.6 If the Customer does not pay any amount properly due to the Designer in connection with any Engagement, the Designer may:
- (a) charge the Customer interest on the overdue amount at the rate of 8% per year above the base rate of Lloyds TSB Bank Plc from time to time (which interest will accrue daily until the date of actual payment and be compounded quarterly); or
  - (b) claim interest and statutory compensation from the Customer pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.7 The Designer may elect to vary the Charges / Hourly Rate by giving to the Customer not less than 30 days' written notice of the variation, providing that any such variation shall not result in a percentage increase in the Charges / Hourly Rate during the Term in excess of the percentage increase during the same period in the Retail Prices Index (all items) published by the UK Office for National Statistics.
- 8.8 The Designer will:
- (a) ensure that the personnel providing the Services complete records of their time spent providing those Services;
  - (b) retain such records during the Term and for a period of 12 months following the end of the Term; and
  - (c) supply such records to the Customer within 10 Business Days following receipt of a written request to do so.

## 9. Warranties

- 9.1 The Customer warrants to the Designer that it has the legal right and authority to enter into and perform its obligations required by each Engagement.
- 9.2 The Designer warrants to the Customer that:
- (a) it has the legal right and authority to enter into and perform its obligations required by each Engagement; and
  - (b) the Services will be performed with reasonable care and skill.
- 9.3 All of the parties' warranties and representations in respect of the subject matter of the Engagement are expressly set out in these Terms of Business and in the Specification. To the maximum extent permitted by applicable law and subject to Clause [10.1], no other warranties or representations concerning the subject matter of the Engagement will be implied into these Terms of Business, the Specification, the Engagement or any other contract.

## 10. Limitations and exclusions of liability

- 10.1 Nothing in the Engagement will:
- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
  - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
  - (c) limit any liability of a party in any way that is not permitted under applicable law; or
  - (d) exclude any liability of a party that may not be excluded under applicable law.
- 10.2 The limitations and exclusions of liability set out in this Clause [10] and elsewhere in the Engagement:
- (a) are subject to Clause [10.1]; and
  - (b) govern all liabilities arising under the Engagement or in relation to the subject matter of the Engagement, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.
- 10.3 The Designer will not be liable in respect of any loss of profits, income, revenue, use, production or anticipated savings.
- 10.4 The Designer will not be liable for any loss of business, contracts or commercial opportunities.
- 10.5 The Designer will not be liable for any loss of or damage to goodwill or reputation.

- 10.6 The Designer will not be liable in respect of any loss or corruption of any data, database or software.
- 10.7 The Designer will not be liable in respect of any special, indirect or consequential loss or damage.
- 10.8 The Designer will not be liable for any losses arising out of a Force Majeure Event.
- 10.9 The Designer's aggregate liability under the Engagement will not exceed the greater of:
- (a) £1; and
  - (b) the total amount paid and payable by the Customer to the Designer under the Engagement.

### 11. Confidentiality

- 11.1 Each party will keep confidential the Confidential Information of the other party, and will not disclose that Confidential Information except as expressly permitted by this Clause [11]. (For the purposes of this Clause [11], the terms of an Engagement constitute the Confidential Information of each party.)
- 11.2 Each party will protect the confidentiality of the Confidential Information of the other party using at least reasonable security measures.
- 11.3 The Confidential Information of a party may be disclosed by the other party to its employees, sub-contractors, insurers and professional advisers, provided that each recipient is legally bound to protect the confidentiality of the Confidential Information.
- 11.4 These obligations of confidentiality will not apply to Confidential Information that:
- (a) has been published or is known to the public (other than as a result of a breach of these Terms of Business);
  - (b) is known to the receiving party, and can be shown by the receiving party to have been known to it, before disclosure by the other party; or
  - (c) is required to be disclosed by law, or by an order (binding upon the relevant party) of a governmental authority, a regulatory body or a stock exchange.

### 12. Force Majeure Event

Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations required by any Engagement (other than obligations to make payment), those obligations will be suspended for the duration of the Force Majeure Event.

### 13. Termination

- 13.1 Either party may terminate an Engagement at any time by giving at least 30 written notice to the other party.
- 13.2 Either party may terminate an Engagement immediately by giving written notice to the other party if the other party:
- (a) commits any [material] breach of any provision of these Terms of Business or the relevant Specification, [and:
    - (i) the breach is not remediable; or
    - (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so; or
  - (b) persistently breaches these Terms of Business and/or the relevant Specification.
- 13.3 Either party may terminate an Engagement immediately by giving written notice to the other party if:
- (a) the other party:
    - (i) is dissolved;
    - (ii) ceases to conduct all (or substantially all) of its business;
    - (iii) is or becomes unable to pay its debts as they fall due;
    - (iv) is or becomes insolvent or is declared insolvent; or
    - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
  - (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
  - (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party required by the Engagement);
  - (d) (where that other party is an individual) that other party dies, or as a result of illness or incapacity becomes incapable of managing his or her own affairs, or is the subject of a bankruptcy petition or order.
- 13.4 The Designer may terminate an Engagement immediately at any time by giving written notice to the Customer if the Customer fails to pay in full and on time any amount due to the Designer whether due in respect of that Engagement or otherwise.

#### 14. Effects of termination

- 14.1 Upon termination of an Engagement all the provisions of these Terms of Business and the Specification will cease to have effect, save that the following provisions of these Terms of Business will survive and continue to have effect (in accordance with their terms or otherwise indefinitely): Clauses [1, 4.5, 7.2, 7.3, 8.6, 8.8, 10, 11, 14, 15 and 17].
- 14.2 Termination of an Engagement will not affect either party's accrued liabilities and rights (including accrued rights to be paid) as at the date of termination.

#### 15. Non-solicitation

The Customer will not without the Designer's prior written consent, either during the term of any Engagement or within 6 months after the date of effective termination of the most recent Engagement, engage, employ or otherwise solicit for employment any employee or contractor of the Designer who has been involved in the Engagement or the performance of the Services.

#### 16. Notices

- 16.1 Any notice given under these Terms of Business must be in writing (whether or not described as "written notice" in these Terms of Business) and must be delivered personally, sent by pre-paid first class post, or email, for the attention of the relevant person, and to the relevant address or email address given below (in the case of the Designer) or in the Specification (in the case of the Customer) - or as notified by one party to the other in accordance with this Clause.

Alex Chilton  
Alex Chilton Design  
Hurlingham Studios  
1 Ranelagh Gardens  
London SW6 3PA  
Email: alex@alex-chilton.co.uk

- 16.2 A notice will be deemed to have been received at the relevant time set out below (or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below):
- (a) where the notice is delivered personally, at the time of delivery;
  - (b) where the notice is sent by first class post, 48 hours after posting; and
  - (c) where the notice is sent by email, at the time of the transmission providing the sending party retains written evidence of the transmission).

#### 17. General

- 17.1 No breach of any term of any Engagement will be waived except with the express written consent of the party not in breach.
- 17.2 If a term of any Engagement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other terms of the Engagement will continue in effect. If any unlawful and/or unenforceable term would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the term will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant term will be deemed to be deleted).
- 17.3 No Engagement will constitute a partnership, agency relationship or contract of employment between the parties.
- 17.4 Neither these Terms of Business nor any Specification may be varied except by a written document signed by or on behalf of each of the parties.
- 17.5 The Designer may freely assign its rights and obligations under any Engagement without the Customer's consent. Save as expressly provided in this Clause or elsewhere in these Terms of Business, neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise dispose of or deal in any rights or obligations under any Engagement.
- 17.6 Each Engagement is entered into for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement relating to any Engagement are not subject to the consent of any third party.
- 17.7 Subject to Clause [10.1]:
- (a) these Terms of Business and the relevant Specification will constitute the entire agreement between the parties in relation to an Engagement, and supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter; and
  - (b) neither party will have any remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into an Engagement.
- 17.8 These Terms of Business and each Specification will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with any Engagement.



**ALEX CHILTON DESIGN**

**Specification of Services**

Customer: .....

Company name: .....

Registered office address: .....

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Effective Date:.....

Services: .....

.....

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Deliverables: .....

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Expected date(s) of delivery (if any): .....

Charges / Hourly Rate: .....

**Customer notices**

The parties have indicated their agreement to the Engagement on the terms of this Specification and the Designer's Terms of Business by signing below.

Signed by .....

on.....

PRINT NAME.....

[the Designer / for and on behalf of the Designer]

Signed by .....

on.....

PRINT NAME.....

[the Customer / for and on behalf of the Customer]