

Dated August 2020

**TERMS AND CONDITIONS FOR BUSINESSES
FOR
ANNEKA GARDNER**

Vanderpump & Sykes LLP

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Our terms

1. Introduction

- 1.1. These are the terms and conditions on which the Designer will supply Products to you, whether these are goods, services or digital content.
- 1.2. Please read these terms carefully before you submit your Instructions to the Designer. These terms tell you the Designer's background, how the Designer will provide products to you, how you may change or end the contract, how the Designer may end the contract, what to do if there is a problem and other important information.
- 1.3. The words "you" and "Customer" in these terms will be a reference to the customer whether a consumer or business.
- 1.4. If you require any changes, please make sure you ask for them to be put in writing. This can help avoid any problems about what you expect from the Designer and what the Designer expects from you.
- 1.5. All the clauses in these terms are applicable to Businesses and Consumers save for Section A, B and Schedule 1. If you are a Business, Section A will also be applicable to you in conjunction with the rest of these terms. If you are a Consumer, Section B will also be applicable to you in conjunction with the rest of these terms.
- 1.6. If you are a business customer these terms constitute the entire agreement between us in relation to your Project. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of me which is not set out in these terms and that you shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 1.7. You are a consumer if:
 - You are an individual.
 - You are commissioning the production of Digital Content and/or buying products from me wholly or mainly for your personal use (not for use in connection with your trade, business, craft or profession).
- 1.8. The Designer's website can be accessed on the following link: www.annekagardner.co.uk
- 1.9. The Designer maintains professional liability insurance.
- 1.10. **Definitions**
 - (a) **The Designer** - Anneka Baptista t/a Anneka Gardner a freelance graphic designer.
 - (b) **Termination** – the date Notice is served by the Consumer on the Designer or the date the Business serves notice in accordance with paragraph 5 of Schedule A.
 - (c) **Instructions** – the initial communication instructing the Designer in relation to services/goods/product/digital content on a Project, which shall be followed up with a Contract.

- (d) **Product** – good, services and/or digital content made with any Photoshop, User Interface, Creative direction, Digital design, Sketch, Visual design, Website, design, logo, illustration, image, brand message/identity, illustration (but not limited to these items) created by the Designer in the course of the business in connection with your Instructions.
- (e) **Project** – a relationship between the Consumer/Business and the Designer in respect of a Product.
- (f) **Services** – the work the Designer carries out in connection with the Consumer/Businesses' Instructions.

2. About the Designer

- 2.1. Anneka Baptista is a Freelance Graphic Designer in England and Wales ("the Designer").
- 2.2. Contact information for the Designer is set out below:

Email: hello@annekagardner.co.uk.

Please note, the Designer is a freelancer and may not always be available to respond to your queries but shall endeavour to respond as soon as possible.

- 2.3. The Designer will contact you by telephone or by writing at the email address or postal address you provided in your Instructions.
- 2.4. The words "writing" or "written" in these terms, this includes emails.

3. Our Contract

- 3.1. When the Designer accepts your Instructions an engagement letter will be sent for the Customer to review the terms of the Contract. Once the Customer signs and dates the Contract, a Contract will be formed. The Customer must ensure they provide a signed copy of the Contract to the Designer.
- 3.2. A copy of the Contract and the Terms and Conditions should be signed and dated to indicate your acceptance and should be returned within 14 days to the Designer. In the instance that the Customer fails to return the above but continues to instruct the Designer then this act is sufficient to indicate acceptance of the Contract and the Terms and Conditions.
- 3.3. If the Designer is unable to accept your Instructions, you will be informed of this in writing or on the telephone.
- 3.4. The Designer will allocate the Instructions for each Project with a reference (this is not necessarily a numerical reference) and you will be informed of the reference after the Designer accepts your Instructions and provides you with a Contract. Please ensure you quote the reference in all communication with the Designer in relation to your Project.
- 3.5. The Designer only works on Projects in the UK. The website www.annekagardner.co.uk is solely for the promotion of the Designer's services in the UK. Unfortunately, the Designer does not accept Instructions from addresses outside of the UK.

4. The Product and the Designer's Services

4.1. Products may vary slightly from their pictures

The Designer makes every effort to display the colours accurately but cannot guarantee that a device's display of the colours accurately reflects the colour of the Product. The Product may vary slightly based on the medium on which it is displayed.

4.2. Making sure your measurements are accurate

If the Designer is making the Product to measurements you have given them, then you are responsible for ensuring that these measurements are correct. The digital measurements will be with reference to pixels.

4.3. Design Charges

Charges for design work do not cover the release of our copyright design sources files, including but not restricted to indd, psd, AI, png, fla or other source files or raw code; if the Customer requires these files for transfer to an in-house or other designer, they will be subject to a separate quotation or 'buy-out' charge.

4.4. Copyrights and Trademarks

4.5. The Designer will endeavour to use their efforts to ensure the Product created for the Project does not resemble something already created and within the public domain worldwide. No guarantee or warranty is given by the Designer that the design created for the Product is unique and has not already been implemented by a third party.

4.6. By supplying text, images and other data to the Designer for inclusion in the Customer's website or other medium, the Customer declares that it holds the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the Customer, or rightful copyright or trademark owner.

4.7. Any software, code, plugin or other third party material used in a web or digital project remains the property of the creator and any ongoing licence fees or fees for upgrades are the responsibility of the Customer, not the Designer.

4.8. Should the Designer, or the Customer supply an image, text, audio clip or any other file for use in a website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitation, the Customer will agree to allow the Designer to remove and/or replace the file on the site.

4.9. The Customer agrees to fully indemnify and hold the Designer harmless in the event of any losses, expenses and all claims resulting from the Customer not having obtained all the required copyright, and/or any other necessary permission.

5. Price and payment

5.1. Where to find the price for the product

The Designer will state the estimated cost of the Project within the initial communication to you upon receiving your Instructions or the Contract. The

Designer will either charge you at an hourly rate which will be set out in the Contract or on a fixed-fee basis.

5.2. When you must pay and how you must pay

The Designer accepts payment by online to my bank account. When you must pay depends on what product you are buying:

- (a) For **digital content**, you must pay a sum of monies on account at the outset of the transaction and settle all other payments for the Product before you download them.
- (b) For **services**, you must make an advance payment of 25% of the price of the services, before the Designer start providing them. The Designer will invoice you monthly in arrears for the services until the services are completed. You must pay each invoice within 30 calendar days after the date of the invoice.

5.3. The Designer will issue monthly Invoices to account for the time spent on your Project.

5.4. Interest on late payment

If you do not make the payment due under each Invoice to the Designer by the due date then the Designer may charge interest to you on the overdue amount at the rate of 4% a year above the base lending rate of National Westminster Bank Plc from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer will be liable for interest together with any overdue amount.

5.5. If you are a Business please refer to Section A for further information on pricing.

6. Your rights to make changes

If you wish to make a change to the Product that are in addition to the Instructions then please contact the Designer. Any changes may constitute as a further instruction and the Designer will let you know if the change is possible and about any changes to the price of the Product, the timing of supply or anything else which would be necessary as a result of your requested may change.

7. Our rights to make changes

7.1. Minor changes to the products

The Designer may change the Product:

- (a) to reflect changes in relevant laws and regulatory requirements; and
- (b) to implement minor technical adjustments and improvements, for example to address a security threat. These changes will not affect your use of the Product.

8. Rights of Access for Website Construction

8.1. The Customer agrees to allow the Designer all necessary access to computer systems and other locations, as required, in order to complete a Project including

the necessary read/write permissions, usernames and passwords. Access should be made available until completion of the Project.

8.2. The Customer will also agree to allow the Designer to access any computer systems, and provide usernames and passwords required to remove data and/or sites for failure to comply with these terms. Any costs incurred in respect of clause 8.1 and 8.2 shall be met by the Customer.

8.3. The Customer agrees to supply the Designer in a reasonable period of time with all necessary materials, electronics, or otherwise, required to create and complete the Project, and to supply them in a timely manner.

9. Intellectual Property Rights

9.1. All intellectual property rights in or arising out of or in connection with the Service of the Product and the Project will be owned by the Designer until all payments settled and the Project has been completed.

9.2. You agree to grant the Designer a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by you to the Designer for the term of the Contract for the purpose of providing the Services to you.

10. Providing the Products

10.1. When the Designer will provide the Product

The Product will be supplied in accordance with the Instructions at the end of the Project. The Designer will endeavour to meet any professional timelines but there is no guarantee that these deadlines will be met. The completion date may change during the course of the Project. During the course of the Project drafts of the Product will be available for the Customer's review and comments only but the Designer will maintain the copyright until the matter is completed. No drafts of the Product can be shared with third parties without the prior written approval of the Designer. Once completion of the Project has taken place and all payments settled, the Designer will make the Product available to the Customer for download.

10.2. The Designer will not be responsible for delays outside their control

If the supply of the Product is delayed by an event outside the Designer's control then the Designer will contact you as soon as possible to let you know. The Designer will not be liable for delays caused by an event, but if the delay exceeds one (1) month you may terminate the Contract and receive a refund for any Product. In the event of the Contract being terminated any time spent on the Project up to the termination point will be payable regardless of termination of the Contract.

10.3. When you own the Product

The Customer will own the Product once all payments have been made to the Designer.

10.4. What will happen if you do not supply the required information

The Designer may need certain information from you so that they can supply the Product to you, for example, your email address and contact details or clarification on Instructions. If you do not give this information within a reasonable time of the

Designer asking for it, or if you give the Designer incomplete or incorrect information, the Designer may:

- (a) End the contract (and clause 11 will apply); or
- (b) make an additional charge of a reasonable sum to compensate the Designer for any extra work that is required as a result.

The Designer will not be responsible for supplying the Product late or not supplying any part of it due to the Customer's failure to provide information.

10.5. Reasons the Designer may suspend the supply of a Product to you

The Designer may have to suspend the supply of a Product to:

- (a) deal with technical problems or make minor technical changes;
- (b) update the Product to reflect changes in relevant laws and regulatory requirements;
- (c) make changes to the Product as requested by you or notified by the Designer to you (see clause 7).

10.6. Your rights if the Designer suspends the Project

The Designer will contact you in advance to tell you the Project will be suspended, unless the problem is urgent or an emergency. If the Designer has to suspend the Project for longer than 2 to 4 weeks consecutively in any year, or the Designer tells you the Project is going to be suspended, in each case for a period of more than 2 to 4 weeks consecutively in a given month, then the Customer will have a right to terminate the Contract and the Designer will refund any sums the Customer has paid in advance for the Project in respect of the period after the date the Contract is terminated.

10.7. The Designer may suspend work on the Project if you do not pay

If the Customer does not pay interim bills throughout the course of the Project when due pursuant to clause 5 and payments are not made within 30 days of each Invoice, the Designer may suspend work on the Project until the Customer has paid the outstanding amounts. The Designer will contact you to tell you work is being suspended on the Project. As well as suspending the Project the Designer can also charge interest on any overdue payments pursuant to clause 5.

11. Data Protection

11.1. The Designer will use any personal information you provide to:

- (a) provide the Services;
- (b) process your payment for the Services;
- (c) inform you about similar products or services that the Designer provides, but you may stop receiving these at any time by contacting the Designer; and
- (d) store your details in the Designer's Customer contacts register.

11.2. Further details of how the Designer will process personal information are set out in http://www.annekagardner.co.uk/privacy_policy.pdf

12. **Rights of Refusal**

12.1. The Designer will not include in their designs, any text, images or other data, which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities. The Designer also reserve the right to refuse to include submit material without giving reason. In the situation where any images and/or data that the Designer include is in good faith, and subsequently discovers is in contravention to such Terms and Conditions, you are obliged to allow the Designer to remove the contravention without hindrance, or penalty. The Designer will be held in no way responsible for any such data being included.

13. **Complaints**

13.1. How to report problems.

If you have any questions or complaints about the product, please contact me by email or telephone. Please refer to Section A or Section B for any rights the Customer may have in respect of Defective Products.

14. **Confidentiality**

14.1. The Designer undertakes that they will not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning one another's business, affairs, customers, Customers or suppliers, except as permitted by clause 14.2.

14.2. We each may disclose the other's confidential information:

- (a) to such of our respective employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of exercising our respective rights or carrying out our respective obligations under the Contract; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3. Each of us may only use the other's confidential information for the purpose of fulfilling our respective obligations under the Contract.

15. **Design Credits**

15.1. The Customer agrees to allow the Designer to place a small credit on printed material exhibition displays, advertisements and/or a link to the Designer's website on your website. This will usually be in the form of a small logo or line of text placed towards the bottom of the page.

15.2. The Customer agrees to allow the Designer to place the Product or aspects of the Project and other designers, along with a link to the Customer's site on the Designer's own website for demonstration purposes and to use any designs in its own publicity and portfolios. The Customer also gives the Designer permission to display designs in relation to the Project on their social media and to be emailed to other Customers in pdf format.

16. **Storage**

- 16.1. The Designer will only store electronic copies of the Project for six (6) years from the end of the Project.
- 16.2. The Designer will not be responsible if the electronic copy stored during the six (6) years or otherwise becomes defective.

17. **Events outside our control**

- 17.1. The Designer will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under the Contract that is caused by any act or event beyond the Designer's control (**Event Outside Our Control**).
- 17.2. If an Event Outside Our Control takes place that affects the performance of the Designer's obligations under the Contract:
 - (a) The Designer will contact you as soon as reasonably possible to notify you; and
 - (b) The Designer's obligations under the Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control. The Designer will arrange a new date for performance of the Services with you after the Event Outside Our Control is over.
- 17.3. You may cancel the Contract affected by an Event Outside Our Control which has continued for more than 30 days. To cancel please contact the Designer. If you opt to cancel the Designer will refund the price you have paid, less the charges incurred by the Designer in performing the Services up to the date of the occurrence of the Event Outside Our Control for the Project.

18. **Termination**

- 18.1. The Designer may end the contract for a Product at any time by writing to you if:
 - (a) Payments are not made when due and payments not made within 14 days of a reminder being sent; and
 - (b) The Designer does not receive information, within a reasonable time of the Designer requesting it.
- 18.2. Please refer to Section A or Section B for specific termination provisions for Consumers or Businesses.

19. **Communications between the Customer and the Designer**

- 19.1. When we refer to "in writing" in these Terms, this includes email.
- 19.2. Please refer to Schedule A for Businesses and Schedule B for Consumers
- 19.3. The provisions of this clause, Schedule A and Schedule B will not apply to the service of any proceedings or other documents in any legal action.

20. **General**

- 20.1. Waiver

If the Designer does not insist immediately that the Customer does anything they are required to do under these terms, or if the Designer delays in taking steps against the Customer in respect of their breach of the Contract, that shall not be construed that the Customer does not have to remedy those breaches and it will not prevent the Designer taking steps against the Customer at a later date.

20.2. Severance

Each paragraph of these terms operates separately. If any court or relevant authority decides that any of them is unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

20.3. Third party rights

The Contract is between the Customer and the Designer. No other person has any rights to enforce any of its terms.

20.4. Governing law and jurisdiction

The Contract is governed by English law and we each irrevocably agree to submit all disputes arising out of or in connection with the Contract to the exclusive jurisdiction of the English courts.

I/We agree to sign these terms and agree that our signature is conclusive evidence of our intention to be bound by these terms

Signature of Customer:

Name of Customer:

Date:.....

Section A – Business to Business

1. Price and Payment

1.1. The Designer has a right of set-off if you are a business customer

If you are a business customer you must pay all amounts due to the Designer under these terms in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

2. Defective Product

2.1. If there is a problem with the Product then report this to the Designer.

2.2. paragraph 4 of this Schedule applies to all Defective Products.

3. Termination

3.1. The Designer may terminate the Contract without limiting any other rights and serve you with written notice if:

- (a) You take any step or action in connection with you entering administration, provisional liquidation or any composition or arrangement with your creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of your assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (b) You suspend, threaten to suspend, cease or threaten to cease to carry on all or a substantial part of your business;
- (c) Your financial position deteriorates to such an extent that in our opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy.

3.2. Termination of the Contract will not affect your or the Designer's rights and remedies that have accrued as at termination.

3.3. If you want to end a Contract before it is completed where the Designer is not at fault then please contact the Designer.

3.4. In the event the Designer is not at fault, the Contract can be terminated before it is completed, but the Customer has to pay compensation to the Designer for any costs incurred producing the bespoke Product or any Product.

3.5. A Contract for goods or digital content is completed when the product is delivered, downloaded or streamed. A contract for services is completed when the Designer has finished providing the services and the Customer has paid for them.

4. Limitation of liability

4.1. The Designer has obtained insurance cover in respect of their own legal liability for individual claims not exceeding £1,000,000.00 per claim. The limits and exclusions in this clause reflect the insurance cover the Designer has been able to arrange and

you are responsible for making your own arrangements for the insurance of any additional loss.

4.2. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation; and
- (c) any matter in respect of which it would be unlawful for the Designer to exclude or restrict liability.

4.3. Subject to paragraph 4.2, the Designer will not be liable to you, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

4.4. Subject to paragraph 4.2,

- (a) The Designer shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with any contract between you and the Designer; and
- (b) The Designer shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or direct loss arising under or in connection with any contract between you and the Designer; and
- (c) The Designer's total liability to you arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will be limited to 10% of the total charges paid under the Contract but not more than £1,000,000.00.

4.5. In the event the Customer brings more than one claim against the Designer. The Designer's total liability for all claims will only be limited to 10% of the total charges paid under all Contracts and no more than £1,000,000.00.

4.6. We have given commitments as to compliance of the Services with the relevant specification in clause 4. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

4.7. The Business cannot bring a claim under these Terms and Conditions unless it:

(a) notifies the Designer that it intends to make a claim in respect of an event within the notice period. The notice period for an event shall start on the day on which it became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail; and

(b) makes a claim within the time limits enforced by the Designer's insurance policy and in any event will not be longer than two years from the end of the Project or Service.

4.8. Noncompliance of paragraph 4.7 will mean the Designer shall have no liability for that event unless it is unlawful to do so.

4.9. This clause will survive termination of the Contract.

5. Communications between you and the Designer

5.1. When we refer to "in writing" in these Terms, this includes email.

5.2. Any notice or other communication given by one of us to the other under or in connection with the Contract must be in writing and be delivered personally, sent by pre-paid first class post or other next working day delivery service, or email.

5.3. A notice or other communication is deemed to have been received:

(a) if delivered personally, on signature of a delivery receipt;

(b) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; or

(c) if sent by email, at 9.00 am the next working day after transmission.

5.4. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an email that such email was sent to the specified email address of the addressee.

5.5. The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

6. Novation and Assignment

The benefit of this Contract and the terms of this Agreement cannot be assigned.

Section B – Business to Consumer

1. Communications between the Consumer and the Designer.

- 1.1. When we refer to "in writing" in these Terms, this includes email.
- 1.2. Any notice or other communication for the Termination of the Contract should be in the form set out in Schedule 1 and emailed to the Designer ("Notice").
- 1.3. The provisions of this clause will not apply to the service of any proceedings or other documents in any legal action.

2. Termination

- 2.1. This clause will only be applicable if you are a consumer and not a business.
- 2.2. The Consumer may end the Contract by serving Notice.
- 2.3. Every Contract with the Designer

Your rights when you end the Contract will depend on the Product, whether there is anything wrong with it, how the Designer is performing, when you decide to end the contract:

- (a) If you want to end the contract because of something the Designer has done or has told you they were going to do; or
 - (b) If you have just changed your mind about the Product. You may be able to get a refund if you are within the cooling-off period, but this may be subject to deductions
- 2.4. Ending the contract because of something has gone wrong.

If the Consumer is ending a contract for a reason set out at (a) to (d) below the contract will end immediately and the Designer will refund you in full for any Products which has not been provided from the termination date. The reasons are:

- (a) The Designer has told you about an upcoming change to the Product or these terms which you do not agree to;
 - (b) there is a risk that supply of the Product may be significantly delayed because of Events Outside Our Control;
 - (c) The Designer has suspended supply of the Products for technical reasons, or notified you they are going to suspend them for technical reasons, in each case for a period of more than one month; or
 - (d) you have a legal right to end the contract because of something the Designer has done wrong.
- 2.5. Cooling-off Period

If you are a Consumer then for most Products bought online you have a legal right to change your mind within 14 days and receive a refund. These rights, under the Consumer Contracts Regulations 2013, are explained in more detail in these terms.

- 2.6. When consumers do not have a right to change their minds.

Your right as a consumer to change your mind does **not** apply in respect of:

- (a) digital products after you have started to download or stream these (including Drafts of the Product);
- (b) Have provided further instructions in respect of the Product after the date of the Contract.
- (c) services, once these have been completed, even if the cancellation period is still running; and
- (d) any products which become mixed inseparably with other items after their delivery.

2.7. How long do consumers have to change their minds?

The services the Designer provides relates to digital content, you have 14 days after the day the Designer emails you to confirm they have accepted your Instructions, or, if earlier, until you start downloading or streaming the first draft of the Product for review. If the Designer delivers the digital content to you immediately, and you agreed to this when instructing the Designer, you will not have a right to change your mind.

3. How to end the contract with the Designer

3.1. Tell the Designer you want to end the Contract.

To end the contract with the Designer you can email hello@annekagardner.co.uk. Please provide your name, home address, details of the Instructions and, where available, your phone number and email address.

3.2. Returning products after ending the Contract.

If you end the Contract for any reason after draft forms of the Product have been provided to you, you must delete this content immediately and not provide this information to any third parties without the Designer's prior written consent. This consent may be subject to a fee.

3.3. How the Designer will refund you.

If you are entitled to a refund under these terms the Designer will refund you the price you paid for the Product less abortive fee by the method you used for payment. However, the Designer may make deductions from the price, as described below.

3.4. When the Designer may make deduction from refunds if you are a consumer exercising your right to change your mind.

If you are exercising your right to change your mind:

The Designer may set off any of their costs incurred and Invoices due from the sums dues back to you together with a reasonable compensation fee if the Product or Project was bespoke to the Customer.

3.5. When your refund will be made.

The Designer will make any refunds due to you as soon as possible. If you are a consumer exercising your right to change your mind then:

- (a) Any refund will be made within 14 days from the day on which the Designer receives written confirmation that you have cancelled the contract and deleted any digital contents in relation to the Product provided.
- (b) In all other cases, the refund will be made within 14 days of cancellation. Written notice of termination must be sent to the Designer informing them you have changed your mind and wish to cancel the Contract.

3.6. You must compensate the Designer if you breach the Contract.

If the Designer ends the contract in the situations set out in clause 18 the Designer will refund any money you have paid in advance for Product, less Invoices for time spent up till that date but the Designer may deduct or charge you a reasonable compensation for the net costs the Designer will incur as a result of your breaking the contract.

3.7. The Designer may withdraw the Project

The Designer may write to you to let you know that they are going to stop withdraw from the Project.

4. Your rights in respect of defective products if you are a Consumer

4.1. If you are a consumer the Designer is under a legal duty to supply products that are in conformity with this Contract. See the box below for a summary of your key legal rights in relation to the products. Nothing in these terms will affect your legal rights.

Summary of your key legal rights

This is a summary of your key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website www.adviceguide.org.uk or call 03454 04 05 06.

If your product is **digital content**, for example a mobile phone app or a subscription to a music streaming service, the Consumer Rights Act 2015 says digital content must be as described, fit for purpose and of satisfactory quality:

- a) If your digital content is faulty, you're entitled to a repair or a replacement.
- b) If the fault can't be fixed, or if it hasn't been fixed within a reasonable time and without significant inconvenience, you can get some or all of your money back
- c) If you can show the fault has damaged your device and I haven't used reasonable care and skill, you may be entitled to a repair or compensation

See also clause 1.4 in this Schedule

4.2. **Alternative dispute resolution if you are a consumer.**

Alternative dispute resolution is a process where an independent body considers the facts of a dispute and seeks to resolve it, without you having to go to court. If you are a consumer and are not happy with how the Designer has handled any

complaint, you may want to contact the alternative dispute resolution provider the Designer uses. You can submit a complaint to the *European Commission Online Dispute Resolution* platform.

5. Our responsibility for loss or damage suffered by you if you are a Consumer

5.1. The Designer is not liable for business losses. If you are a consumer the Designer only supply the Products for to you for domestic and private use. If you use the products for any commercial, business or re-sale purpose our liability to you will be limited as set out in Section A for Businesses.

5.2. The Designer's responsibility for foreseeable loss and damage caused by the Designer

If the Designer fails to comply with these terms, the Designer is responsible for loss or damage you suffer that is a foreseeable result of the Designer breaking this contract or the Designer's failure to use reasonable care and skill, but the Designer is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made or during the course of the Project, either you or the Designer knew it might happen, for example, if you discussed it with the Designer during the sales process or during the Project.

5.3. The Designer does not exclude or limit in any way liability to you where it would be unlawful to do so

This includes the right to receive products which are: as described and match information the Designer provided to you and any sample or model seen or examined by you; of satisfactory quality; fit for any particular purpose made known to the Designer; supplied with reasonable skill and care and, and for defective products under the Consumer Protection Act 1987

5.4. If defective digital content which the Designer has supplied damages a device or digital content belonging to you and this is caused by the Designer's failure to use reasonable care and skill then the Designer will either repair the damage or pay you a reasonable sum as compensation. These sums shall not exceed the Designer's insurance policy. However, the Designer will not be liable for damage which you could have avoided by following advice to apply an update offered to you free of charge or for damage which was caused by you failing to correctly follow installation instructions or to have in place the minimum system requirements advised.

5.5. All compensation and sums payable under this clause shall be subject to the limits imposed by the Designer's insurance policy.

5.6. The Consumer cannot bring a claim under these Terms and Conditions unless it:

(a) notifies the Designer that it intends to make a claim in respect of an event within the notice period. The notice period for an event shall start on the day on which you became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail; and

(b) Makes a claim within the time limits enforced by the Designer's insurance policy and in any event will not be longer than three years from the end of the Project or Service.

- 5.7.** Noncompliance of paragraph 5.6 will mean the Designer shall have no liability for that event unless it is unlawful to do so.
6. Assignment of Rights
- 6.1. The Designer may transfer rights and obligations under these terms to another organisation. The Designer will always tell you in writing if this happens and the Designer will ensure that the transfer will not affect your rights under the Contract.
- 6.2. You may only transfer your rights or your obligations under these terms to another person if the Designer agrees to this in writing. The Designer can refuse to the assignment only upon providing a reasonable reason to reject the assignee.

1.

- Model Cancellation Form for consumers

(Complete and return this form only if you wish to withdraw from the contract)

To [TRADER'S NAME, ADDRESS, TELEPHONE NUMBER AND, WHERE AVAILABLE, FAX NUMBER AND E-MAIL ADDRESS TO BE INSERTED BY THE TRADER]

I/We [*] hereby give notice that I/We [*] cancel my/our [*] contract of sale of the following goods [*/for the supply of the following service [*],

Ordered on [*/received on [*],

Name of consumer(s),

Address of consumer(s),

Signature of consumer(s) (only if this form is notified on paper),

Date

[*] Delete as appropriate