



TERMS AND CONDITIONS

AGREEMENT BETWEEN DESIGNER AND BUSINESS OR INDIVIDUAL IDENTIFIED ON THIS AGREEMENT. THE CLIENT/INDIVIDUAL LISTED BELOW IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS.

GENERAL WORKING AGREEMENT – This document defines the terms and conditions of our working relationship. All projects or services that DESIGNER may be contracted to produce or provide for CLIENT will be subject to the following:

WORKING/BILLING PHASES – Based on our experience with long-term design communications projects, we have found that it is mutually advantageous to handle each project in logical working/billing phases.

Concept revisions, extensive alterations, or a switch in marketing objectives sometimes makes it impossible to accurately estimate in advance the total cost of a project. Planning the work, cost estimating, and billing in several phases permits DESIGNER or CLIENT to adjust for such revisions or halt work before completion if a project is postponed or canceled. Any canceled project is billed only through phases and/or portions of phases that were actually completed by DESIGNER. For each project, CLIENT will receive a proposal/estimate outlining the project specifications and our proposed scope of services and working/billing phases. Each proposal estimate will contain a project budget, which includes estimated fees for professional services and separate itemized costs for anticipated out-of-pocket expenses.

We will begin work upon CLIENT'S approval of the written estimate. Your approval (written or oral) will constitute an agreement between us.

PAYMENT/ESTIMATES – CLIENT agrees to pay DESIGNER in accordance with the terms specified in each proposal/estimate. Unless otherwise specified, all subsequent balances due are payable upon art approval.

A late fee of 2% of the total amount due will be assessed daily on all invoices 30 days past due. We reserve the right to refuse completion or delivery of work until past due balances are paid.

Estimate: Billing will reflect the actual costs incurred. Valid for only 30 days from date on estimate. CLIENT requested changes will be billed additionally. The client will be notified of any price changes.

Checks are to be made payable to Gentry Smith Design.

OUT-OF-POCKET EXPENSES – Fees for professional services do not include outside purchases such as, but not limited to, printing, photography, color printouts, laminating, illustrations, separations, shipping and handling or courier service. Expenses are itemized on each invoice. Expenses are subject to Arizona sales tax unless 1) You are a nonprofit organization; or 2) the work is for resale and you have submitted a resale certificate to DESIGNER. If consultant or supervisory services are required in out-of-town locations, we will bill lodgings, meals, and transportation at cost. Reimbursement for mileage is calculated at current allowable rates.

JOB ROUTING – All requests for jobs, inquiries, negotiations, and communications shall be channeled through the Contract' Project Manager (DESIGNER).

Work requests (additions and changes) will only be accepted with pre approval from the Authorizing Manager(s) (CLIENT).

REVISIONS AND ALTERATIONS – New work requested by CLIENT and performed by DESIGNER after a proposal/estimate has been approved is considered a revision or alteration. If the job changes to an extent that substantially alters the specifications described in the original estimate, we will submit a proposal revision memo to you, and a revised additional fee must be agreed to by both parties before further work proceeds.

Author's alterations and other copy changes requested after layouts or mechanicals are completed are billed at standard hourly rates.

OVERTIME – Estimates are based on a reasonable time schedule, and may be revised to take into consideration your "Priority Scheduling" requests requiring overtime and weekends. Knowledge of your deadlines is essential to provide an accurate estimate. In addition, outside suppliers such as service bureaus charge a 100% to 200% markup on overtime after 5:30pm and weekends.

NATURE OF COPY – CLIENT agrees to exercise due diligence in its direction to us regarding preparation of materials and must be able to substantiate all claims and representations. CLIENT is responsible for the accuracy of all content and warrants that any elements of text, graphics, photographs, designs, or other artwork furnished to DESIGNER are owned by CLIENT or that CLIENT has permission from the rightful owner to use each of these elements. CLIENT is responsible for all trademark, servicemark, copyright and patent infringement clearances. CLIENT is also responsible for arranging, prior to publication, any necessary legal clearance of materials we prepare. CLIENT will hold DESIGNER harmless for any claims arising from the use or misuse of such elements.

ERRORS AND OMISSIONS – It is CLIENT'S responsibility to check proofs carefully for accuracy in all respects, ranging from spelling to technical illustrations. DESIGNER is not liable for errors or omissions. Your signature or that of your authorized representative is required on all mechanicals or artwork prior to release for printing or other implementation.

TELECOMMUNICATIONS – CLIENT shall pay for all transmissions charges. DESIGNER is not responsible for any errors, omissions or extra costs resulting from faults in the telephone, cable, satellite network or from incompatibility between the sending and receiving equipment.

OVER RUNS AND UNDER RUNS – CLIENT will accept over runs or under runs that do not exceed 10% of the quantity ordered on all jobs. DESIGNER will bill for actual quantity delivered within this tolerance. If CLIENT requires a guaranteed quantity, the percentage of tolerance must be stated at the time of quotation.

PLACEMENT OF ADVERTISING – At your request, we will purchase media space on your behalf through our media division. Space will be billed to you at current rates plus the standard agency commission.

PROPERTY AND SUPPLIER'S PERFORMANCE – DESIGNER will take all reasonable precautions to safeguard the property you entrust to us. In the absence of negligence on our part, however, we are not responsible for loss, destruction or damage or unauthorized use by others of such property. We will use our best efforts to ensure quality and timely delivery of all printed (offset, silk-screened, embossed or otherwise reproduced) pieces. Although we may use our best efforts to guard against any loss to you through the failure of our vendors, media, or others to perform in accordance with their commitments, DESIGNER is not responsible for failure on their part.

If you select your own vendors, other than those recommended by us, you may request that we coordinate their work. If at all possible, we will attempt to do so, but we cannot in anyway be held responsible for quality, price, performance or delivery.

LIEN – All materials or property belonging to CLIENT, as well as work performed, may be retained as security until all just claims against CLIENT are satisfied.

RIGHTS OF OWNERSHIP – Once a project has been delivered by us and is fully paid for by CLIENT, DESIGNER will assign the reproduction rights of the design for the use(s) described in the proposal.

All materials used in the production of project – including original and reproduction artwork and computer generated instructions, formats, and files – remain the property of DESIGNER. All ideas, sketches, and concepts remain the property of DESIGNER and maybe used in the future at DESIGNER'S discretion.

According to the Copyright Law of 1976, the rights to all design and art work, including but not limited to photography and illustration created by independent photographers or illustrators retained by DESIGNER, or purchased from a stock agency on your behalf, remain with the individual designer, artist, photographer or illustrator. Unless a purchase of "All Rights" (A Buyout) is negotiated with DESIGNER and/or his/her authorized representative, you may not use or reproduce the design or the images therein for a purpose other than the one(s) originally stipulated. If you wish to use the design we have created and/or the images within it for another purpose or project, including a reprint or exhibition, you must contact us to arrange the transfer of rights and any additional fees before proceeding. If printing or other implementation is done through your vendors, you agree to return to us all our original mechanicals and artwork (slides, prints, drawings, separations, etc.) within two weeks, and to provide us with printed samples of each project.

We reserve the right to photograph and/or distribute or publish for our firms promotional and marketing needs any work we create for you, including mock-ups and comprehensive presentations, as samples for our portfolio, firm news letter, brochures, slide presentations and similar media. We agree to store mechanical boards and computer disks for a period of 6 months beyond the delivery of a job. Thereupon, we reserve the right to discard them.

TERM AND TERMINATION – The term of this agreement will continue for work in progress until terminated by either of us upon thirty (30) days written notice. If you should direct us at any time to cancel, terminate or "put on hold" any previously authorized purchase, we will promptly do so, provided you hold us harmless for any cost incurred as a result.

Upon termination of this agreement, DESIGNER will transfer to CLIENT all your property and materials in our control and for which you have paid. CLIENT will indemnify and hold DESIGNER harmless for any loss or expense (including attorney's fees), and agree to defend DESIGNER in any actual suit, claim or action arising in any way from our working relationship. This includes, but is not limited to assertions made against CLIENT and any of its products and services arising from the publication of materials that we prepare and you approve before publication.

PRODUCTION SCHEDULES – Production schedules will be established and adhered to by both CLIENT and DESIGNER, provided that neither shall incur any liability, by both CLIENT and DESIGNER, provided that neither shall incur any liability, labor trouble or strike, accidents, energy failure, equipment breakdown, delays in shipment by suppliers or carriers, action of government or civil authority, and acts of God or other causes beyond the control of Client or Designer. Where production schedules are not adhered to by the Client, final delivery date or dates will be adjusted accordingly.

EXCLUSIVITY – This is not an exclusive agreement. DESIGNER and CLIENT may enter into similar agreements with other parties.

DISPUTE RESOLUTION – Both parties waive their rights to a jury trial as to any issue arising out of or related to this agreement. Any dispute or difference arising out of or in connection with this contract that cannot be resolved between DESIGNER and CLIENT shall be determined by the appointment of a single arbitrator to be agreed upon between both parties.

ENTIRE AGREEMENT – This agreement is the final, entire and exclusive agreement between the parties with respect to its subject matters. No modification or waiver of any provision of this agreement shall be effective unless in writing and signed by the party sought to be bound. The provisions of the agreement, which by their nature have affect beyond the termination, or expiration of the agreement shall survive its termination or expiration.

CREDIT LINES – DESIGNER shall incorporate a credit line where applicable. Should any other firm or CLIENT alter the project significantly such that the design is not acceptable to DESIGNER'S quality expectations, then DESIGNER reserve the right to have the credit line removed.

LIMITATION OF LIABILITY – DESIGNER does not warrant that the functions of the project will meet Client's expectations of site traffic or resulting business. In no event will DESIGNER be liable to CLIENT or any third party for any damages, including any lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate, even if DESIGNER has been advised of the possibility of such damages.

Neither party shall be liable nor deemed to be in default for any delay or failure in performance under this agreement resulting directly or indirectly from acts of God, strikes, lockouts, riots, epidemics, war, governmental regulations, fire, communication line failures, power failures, explosions, earthquakes, floods, vandalism or other causes beyond its control, and the occurrence

ADDITIONAL PROVISIONS – The validity and enforceability of this agreement will be interpreted in accordance with the laws of the State of Arizona applicable to agreements entered into and performed in the State of Arizona. This agreement is our entire understanding and may not be modified in any respect except in an executed agreement.

If we must retain attorneys to collect our invoices, we will be entitled to reasonable attorney's fees, court costs, and interest at the maximum rate permitted by law.

Company Name _____

Company Address _____

Client Name (PRINT) _____

Client Signature _____ Date _____

