

# TERMS OF TRADE

## Red Snapper Design 2019



### 1. DEFINITION AND INTERPRETATION

- 1.1 In these terms unless the context shall require otherwise:
- 1.1.1 Red Snapper Design and any of its associated names is the Company.
  - 1.1.2 "Customer" means the person firm or company at whose request work is to be done.
  - 1.1.3 "Completion" means the date of Red Snapper Design's notice to the Customer that work has been completed or the product is ready for delivery or collection.
  - 1.1.4 "Contract" means the contract upon these terms for the performance of work.
  - 1.1.5 "Product" means the product resulting from the work performed by "Red Snapper Design."
  - 1.1.6 "Quotation" means the quotation accompanying these conditions for work to be done.
  - 1.1.7 "Work" means the performance of any work at a Customer's request whether involving design, artwork, printing, photography, websites, advertising or otherwise.
- 1.2 These terms and the terms set out on the Quotation together constitute the only terms of the Contract and no amendment or addition thereto shall be effective unless agreed in writing by an authorised representative of Red Snapper Design.
- 1.3 Headings in these terms are for convenience only and shall not affect the construction of these terms; the masculine shall include all genders and the singular include the plural; any reference to statutory provision as enacted or re-enacted from time to time.

### 2. FORMATION OF CONTRACTS

- 2.1 The Customer's request to Red Snapper Design to carry out Work is an offer to enter into a Contract upon these terms. Acceptance occurs when the customer requests work to commence whether verbal, written or in the form of an email.
- 2.2 The Contract is personal to the Customer and the Customer shall not assign the benefit of the Contract without the prior written consent of an authorised representative of Red Snapper Design.
- 2.3 The Contract is not cancellable by the Customer without the express written consent of an authorised representative of Red Snapper Design. If Red Snapper Design agrees to cancellation by the Customer the Customer shall indemnify Red Snapper Design in full against all expenses incurred up to the time of cancellation and forthwith pay to Red Snapper Design a proportion of the Contract price by way of liquid damages.

### 3. ESTIMATES/QUOTATIONS

Any estimate or Quotation given by Red Snapper Design is a considered approximation of the likely cost of work. Neither Estimates or Quotations constitute an offer by Red Snapper Design. The Quotation is valid from 14 days from the date stated thereon.

### 4. PRICE AND VARIATION

- 4.1 Prices for Work stated in any estimate or in the Quotation are based on prices and time chargeout rates current at the date of Quotation.
- 4.2 Red Snapper Design reserves the right to vary the price of Work by any amount attributable to a change in the Customers instructions or any variation in costs to Red Snapper Design of goods, materials or labour required for the performance of the Contract and Taxes or any other costs whatsoever between the date of the Contract and the date of Completion or payment (whichever is the later).
- 4.3 The Contract may not be varied without the express consent of an authorised representative of Red Snapper Design. Any variation so agreed shall not constitute a new Contract but shall be deemed to be an amendment of this Contract.

### 5. PAYMENT

- 5.1 All payments are due without any deduction whatsoever and Red Snapper Design reserves the right to require the Customer to make full or part payment prior to the performance of any stage of Work provided that Red Snapper Design shall have notified the Customer in advance of its requirements of full or part payment in advance. All other payments shall be made immediately upon delivery of the Product or within 20 days of delivery.
- 5.2 Red Snapper Design shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property in its possession belonging to the Customer and shall be entitled after the expiration of 28 days notice to dispose of such goods and property as it thinks fit, and apply the proceeds towards such debts.
- 5.3 Red Snapper Design reserves the right at any time at its discretion to demand security for payment before continuing performance of Work.
- 5.4 Interest will be charged on all sums due under or by way of damages for breach of the contract at the rate of 5% per annum and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by Red Snapper Design against the Customer).
- 5.5 At Completion of the Work Red Snapper Design shall advise the Customer that the Product is ready for delivery. If the Customer refuses to accept delivery of the Product Red Snapper Design shall be entitled to charge the Customer for any storage charges thereby incurred.

### 6. RISK AND RETENTION OF TITLE

- 6.1 The Product becomes the risk of the Customer as soon as it has been notified by Red Snapper Design that it is ready for delivery.
- 6.2 Until Red Snapper Design has received payment in full of all sums owed to it on any account by the Customer, whether arising out of this or any other Contract, legal and beneficial title to the Product shall remain in Red Snapper Design.

### 7. TIME

Dates given for Completion of the Work are estimates only. Time is not of the essence of the Contract. Red Snapper Design will use reasonable endeavours to perform Work within the time (if any), specified to the Customer. The Customer shall not be entitled to reject the Product completed or delivered later than the estimate date.

### 8. INTELLECTUAL PROPERTY

- 8.1 Unless otherwise agreed in writing all original design work and artwork remains the property of Red Snapper Design. Red Snapper Design shall retain the copyright therein, and the Customer shall not obtain any right, title or interest therein, and shall not be capable of granting to any third party any right, title or interest therein.

- 8.2 The Customer shall at all times indemnify and keep indemnified Red Snapper Design against:
- 8.2.1 All costs, damages or other loss (including legal expenses) incurred by reason of any claim for infringement of any letters patent, registered design, trade mark, copyright or name violation of any third party right resulting from the use or sale of the product.
  - 8.2.2 All in direct consequential loss, costs, damages or expenses sustained or claimed against Red Snapper Design. And arising out of the customers breach of Contract or any other circumstances mentioned in this condition.
- 8.3 No design shall be altered or adapted by the Customer without Red Snapper Design's consent.
- 8.4 The customer warrants that it has the authority to request the work in respect of the materials and information delivered to Red Snapper Design by or by the order of the Customer and in particular that in carrying out the work Red Snapper Design will not be infringing any third party copyright or other intellectual property rights. At Red Snapper Design's request the Customer shall produce to Red Snapper Design and shall allow Red Snapper Design to take copies of those documents here under the Customer deliveries and authority referred to above.

### 9. DEFECTIVE GOODS

- 9.1 As the quality of Work performed by and the Product provided by Red Snapper Design is substantially dependent upon the quality of the information and data provided by the Customer Red Snapper Design does not give any warranty as to the standard or quality of Product. Work is performed and the Product is supplied on the express understanding that the Customer will independently determine the suitability of the Product for the purpose for which it is supplied. Recommendations, information and data sheets, and other descriptive materials given by Red Snapper Design shall not be construed as or deemed to be warranties of any kind.
- 9.2 No claims in respect of defective Work or Product shall be entertained by Red Snapper Design unless notified to Red Snapper Design and shown to Red Snapper Design's satisfaction to be defective within 7 days of the provision thereof and the defect has arisen other than through:
- 9.2.1 Defects in the information or data supplies by the Customer.
  - 9.2.2 Red Snapper Design following the Customer's instructions.
  - 9.2.3 Defects inherent in the relevant process.
- 9.3 Red Snapper Design's liability in respect of any such claims entertained by it are limited solely to the expense of rectifying such defects and in no event shall Red Snapper Design be liable for consequential or special loss or damage sustained by the business or for loss occasioned by delay in completing the Work provided that this clause does not operate to exclude liability for personal injury or detail as a result of negligence on the part Red Snapper Design.
- 9.4 The Customer shall indemnify and keep indemnified Red Snapper Design against all actions, claims, damages, demands and expenses or other loss occasioned by or contributed to by wrongful, misleading or other defective information supplied by the Customer.
- 9.5 The Customer warrants that the information and data provided to Red Snapper Design shall not be contrary to public decency and the public policy and shall not infringe any law statute or statutory instrument in force at the date of the Contract.
- 9.6 Red Snapper Design shall be entitled to appoint Sub-contractors for the performance of its obligations under the Contract and does not give any warranty as to the standard or quality of the sub-contractor's work.

### 10. DESIGN CREDITS

Red Snapper Design shall be entitled to claim authorship of a design for which it has been responsible and the customer shall procure that Red Snapper Design name is reproduced on any finished product or otherwise published by the Customer and that appropriate credits are given for Work and the Product.

### 11. FORCE MAJEURE

Red Snapper Design shall not be liable for any loss if the performance of Work and or the supply of the Product is made impossible or delayed by reason of but without limitation to strikes, sit-ins, trade disputes, lockouts or any other actual or threatened industrial action, war, national emergency, fire, flood, drought, shortage of fuel or power, or any other cause outside the control of Red Snapper Design, and Red Snapper Design shall be entitled to payment for Work carried out and expenses up to the date of such event.

### 12. TERMINATION

- 12.1 If the Customer defaults in or commits any breach its obligations hereunder or enters into any arrangement with or compounds with its creditors or being an individual commits an act of Bankruptcy or has any execution or distress levied upon its goods or property or being a limited company has any petition presented or any other steps are taken to wind up the the Customers business or any Administrator or Receiver is appointed over its assets Red Snapper Design has the right to forthwith to determine the Contract without prejudice to any claim or right which might otherwise be made or exercised.
- 12.2 Upon termination under this clause, Red Snapper Design shall be entitled to recover any expenses incurred by it in connection with the Work or Product.

### 13. NOTICES

Any notice under these conditions shall be properly given if in writing and if sent by first class post or email to the address of the intended recipient as stated in the Contract or to such an address, from time to time, notify to each other as their respective addresses for service and shall be deemed served in the case of postal notice on the expire of 48 hours from the time of posting or emailing.

### 14. CONSTRUCTIONS AND JURISDICTION

- 14.1 These conditions shall be construed in accordance with the laws of England and Wales.
- 14.2 Each of these conditions in each paragraph hereof shall be construed as a separate condition. Should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of Red Snapper Design liability then such provision shall apply with such modification as may be necessary to make it valid and effective.