

**Terms and Conditions: updated January 2009**

1. Estimates are based on the OceanBarefoot (OB) current costs of production and, unless otherwise agreed, are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.
2. All quotes and estimates will be exclusive of all taxes due.
3. All work carried out, whether experimentally or otherwise, at the client's request shall be charged at the quoted hourly rate.
4. A charge may be made to cover any additional work involved where copy supplied is not clear and legible or supplied as paper original requiring keyboard input.
5. Proofs of all work may be submitted for client's approval and OB shall incur no liability for any errors not corrected by the proofs. Any changes necessitated thereby shall be charged as extra. When style, type or layout is left to OB's judgment, changes therefore made by the client shall be charged as extras. It is the clients' prerogative to ensure that all work carried out is approved for correct content including; grammar, spelling, and technical content. Colour match proofs are available at all stages of pre-press/pre-'going-live' (web) at the request of and costs incurred to the client.
6. **Ownership.**

Delivery of work shall be accepted when tendered and there upon or, if earlier, on notification that the work has been completed the ownership shall pass to the client upon payment of all fees and costs incurred to complete that work.
7. **Delivery**
  - a) Unless otherwise specified the price quoted is for delivery of the work to the client's address as set out in the estimate. A charge may be made to cover any extra costs involved for delivery to a different address.
  - b) Should expedited delivery be agreed an extra cost may be charged to cover any overtime or any other additional costs involved.
  - c) Claims Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to OB and the carrier within three clear days of delivery (or, in the case of non-delivery, within 28 days of dispatch of the goods) and any claim in respect thereof must be made in writing to OB and the carrier within seven clear days of delivery (or, in the case of non-delivery, within 42 days of dispatch). All other claims must be made in writing to OB within 28 days of delivery. OB shall not be liable in respect of any claim unless the aforementioned requirements have been complied with exception in any particular case where the client proves that advice (where required) was given and the claim was made as soon as reasonably possible.
8. **Suspension of work**

Should work be suspended at the request of or delayed through any default of the client for a period of 30 days the designer shall be then entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.
9. **Payment**
  - a) Any queries regarding invoices should be raised within 7 days of the date of the invoice, otherwise the invoice terms and value will be deemed accepted and agreed to by the client.
  - b) If payment is not made within the specified terms of the invoice OB will exercise its right to claim a daily (or part thereof) charge to cover all other costs incurred at present set at 5% over base rate per day (as of January 09), until either payment is completed. OB may also claim any costs incurred in recovering monies owing.
10. OB shall not be liable for any loss to the client arising from delay in transit not caused by the designer. Internet designs are completed and published at the risk of the client and OB cannot be held responsible for third party costs or liabilities incurred by the content of such designs. It is the clients responsibility to ensure that the contents abide by UK law. OB reserves the right to terminate at any time a contract to design, print or publish any material deemed to be in contravention of any of UK law (see section 13).
11. Standing material; Metal, film, glass, digital media and other materials owned by OB in the production of print, the like shall remain his/her exclusive property.

## **12. Client's property**

**a)** except in the case of a client who is not contracting in the course of a business nor holding himself out as doing so, client's property and all property supplied to OB by or on behalf of the client shall while it is in possession of OB or in transit to or from the client be deemed to be at client's risk unless otherwise agreed and the client should insure accordingly.

**b)** OB shall be entitled to make a reasonable charge for the storage of any client's property left with OB before receipt of the order or after notification to the client of completion of the work. It is the clients' responsibility to ensure that in the case of domain names and hosting the renewal payments are made within the contract period. A charge may be payable for data transfer to the client or an appointed agent outside of the original cost of design, ie: for - archive retrieval, CD burn, and transfer of scripted elements to another company's server.

## **13. Insolvency.**

If the client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or being a company is deemed to be unable to pay its debts or has a winding-up petition issued against it or being a person commits an act of bankruptcy or has a bankruptcy petition issued against him, the designer without prejudice to other remedies shall

**a)** have the right not to proceed further with the contract or any other work for the client and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the client, such charge to be an immediate debt due to him, and

**b)** in respect of all unpaid debts due from the client have a general lien on all goods and property in his possession (whether worked on or not) and shall be entitled on the expiration of 7 days notice to dispose of such goods or property in such manner and at such price as he thinks fit and to apply the proceeds towards such debts.

## **14. Illegal materials**

**a)** OB shall not be required to publish any material which is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of any third party.

**b)** OB shall be indemnified by the client in respect of any claims, costs and expenses arising out of any libellous materials or any infringement of copyright, patent, and design or of any other proprietary or personal rights contained in any material published for the client. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim. (see section 8). It is the responsibility of the client supplying images, text and any other elements forming the final design to ensure that they are copyright approved and/or permissions have been granted for their usage if not owned/copy written by the client.

## **15. Force majeure**

OB shall be under no liability if they are unable to carry out any provision of the contract for any reason beyond their control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action during the continuance of such a contingency the client may by written notice to OB elect to terminate the contract and pay for work done and materials used, but subject thereto shall otherwise accept delivery when available.

## **16. Law.**

These conditions and all other express terms of the contract shall be governed and construed in accordance with the laws of the UK.

## **17. Copyright ©:**

all imagery and/or scripting used on the OB servers or servers contracted by OB remains the intellectual property of OB, therefore it is prohibited and unlawful to... copy, adapt, distribute, communicate to the public by electronic transmission (including by broadcasting and in an on-demand service), rent or lend copies to the public or any other 3rd party within the UK without prior written permission of OB. If material is discovered in use without permission OB will inform the police or the relevant local trading standards department.