



# Terms and Conditions

## Application

These Terms and Conditions shall apply to the provision of the services detailed overleaf ("Services") by Purple Banana Creative Design [of] 107 Birchanger Road, London, SE25 5BH ("Supplier") to you ("Client"). No other terms and conditions shall apply to the provision of Services unless agreed upon in writing between the Provider and the Client.

## Interpretation

- A "business day" means any day other than a Saturday, Sunday or bank holiday.
- The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- Words imparting the singular number shall include the plural and vice-versa.

## Services

- With effect from the commencement date stated in this quotation and in consideration of the Fees being paid in accordance with these Terms and Conditions, Purple Banana shall provide the Services to the Client.
- Purple Banana will use reasonable care and skill in its performance of the Services and shall ensure compliance with any and all relevant codes of practice.
- Purple Banana will use its best and reasonable endeavours to complete its performance of the Services within the time agreed as set out in this quotation; however time will not be of the essence in the performance of these obligations.

## Source Files

- I will supply proofs and PDF files as appropriate for printing, or other graphic files as detailed in the project deliverables.
- Charges for design work do not cover the release of our copyright design source files, including but not restricted to indd, psd, AI, png, fla or other source files or raw code; if the Client requires these files for transfer to an in-house or other designer, they will be subject to a separate quotation or 'buy-out' charge.

## Data Formats

- The Client agrees to Purple Banana's definition of acceptable means of supplying data to the company.
- Text is to be supplied to Purple Banana in electronic format as standard text (.txt), MS Word (.docx) or via e-mail / FTP or shared folder.
- Images which are supplied in an electronic format are to be provided in a format as prescribed by Purple Banana via e-mail / FTP. Images must be of a quality suitable for use without any subsequent image processing, and Purple Banana will not be held responsible for any image quality which the client later deems to be unacceptable.
- Purple Banana cannot be held responsible for the quality of any images which the Client wishes to be scanned from printed materials.
- Additional expenses may be incurred for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing, or data entry services, colour correction and alteration of images.

## Alterations

- The Client agrees that changes required over and above the estimated work, or in addition to the agreed scope, or where the Client makes changes to the supplied copy or changes required to be carried out after

- acceptance of the draft design, will be liable to a separate charge.
- The Client also agrees that Purple Banana holds no responsibility for any amendments made by any third party, before or after a design is published.

## Licensing

- Any design, copywriting, drawing, idea or code created for the Client by Purple Banana, is licensed for use by the client on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express written consent of Purple Banana.
- All design work – where there is a risk that another party make a claim, should be registered by the Client with the appropriate authorities prior to publishing or first use or searches and legal advice sought as to its use.
- Purple Banana will not be held responsible for any and all damages resulting from such claims.
- Purple Banana is not responsible for any loss, or consequential loss, non-delivery of products or services, of whatever cause. The customer agrees not to hold Purple Banana responsible for any such loss or damage.
- Any claim against Purple Banana shall be limited to the relevant fee(s) paid by the Client.

## Client Obligations

- The Client shall use its best and reasonable endeavours to provide Purple Banana with access to any and all relevant information, materials, properties and other matters which are required to enable Purple Banana to provide the Service.
- The Client shall use its best and reasonable endeavours to acquire any permissions, consents, licences or other matters which are required to enable Purple Banana to provide the Services.
- Purple Banana shall not be liable for any delay or failure to provide the Services where such delay or failure is due to the Client's failure to comply with the provisions of the Client Obligations.

## Fees

- The fees ("Fees") for the Services are set out in this proposal
- In addition to the Fees, Purple Banana shall be entitled to recover from the Client reasonable incidental expenses for materials used and for third party goods and / or services supplied in connection with the Services.
- The Client shall pay Purple Banana for any additional services provided by Purple Banana that are not specified in this proposal in accordance with Purple Banana's then current, applicable hourly rate in effect at the time of performance or such other rate as may be agreed between Purple Banana and the Client.
- The Fees are exclusive of any applicable VAT and other taxes or levies which are imposed or charged by any competent authority.
- The Client shall be required to pay a deposit ("Deposit") as detailed in this proposal at the time of acceptance.
- If the Client does not pay the Deposit Purple Banana shall have the right to withhold
- provision of the Services until the Deposit is received or may terminate this agreement.
- The Deposit shall be non-refundable unless Purple Banana fails to provide the Services and is at fault for such failure (where the failure is not the fault of Purple Banana, no refund shall be made).

## Quotation, Contract and Variation

- Purple Banana is not obliged to accept an order for Services from the Client unless the Client has supplied references which are requested by, and satisfactory to, Purple Banana.
- This proposal constitutes written acceptance and confirmation by Purple Banana of the Client's order for the Services (as agreed between Purple Banana and the Client).
- Having issued this proposal which is a contractual offer to provide the Services, Purple Banana agrees to enter into a contract for the provision of Services upon the Client's written acceptance of this proposal and of these Terms and Conditions.
- This proposal is valid for a period of 14 days only from the date shown overleaf unless expressly withdrawn by Purple Banana at an earlier time.
- Either Purple Banana or the Client may cancel the order for any reason prior to the Client's acceptance (or rejection) of this proposal.
- Charges for any additional services requested during the project that are over and above the estimated time

or out of scope, will become fully payable (100% of the quoted amount) at the time of estimate or proposal acceptance.

- If, due to circumstances beyond its control, Purple Banana has to make any change in the Services or the arrangements relating to the provision thereof, it shall notify the Client immediately. Purple Banana shall endeavour to keep any such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

## Payment

- Following the Client's acceptance of this proposal, Purple Banana shall invoice the Client for a non-refundable 30% of the Fees with the remaining balance payable on completion of the project before the final files are released.
- The Client shall pay the Fees due as soon as possible to book the project into my schedule and so the project can start without delay.
- Time for payment shall be of the essence of the Contract between the Purple Banana and the Client.
- If the Client fails to make payment at their earliest convenience, Purple Banana shall charge the Client interest at the rate of 8% per annum above the Bank of England's base rate from time to time on the amount outstanding until payment is received in full.
- If the Client fails to make payment at their earliest convenience, Purple Banana shall have the right to suspend any further provision of the Services and to cancel any future services which may have been ordered by, or otherwise arranged with, the Client.
- Receipts for payment will be issued by Purple Banana only at the Client's request.
- All payments must be made in £ unless otherwise agreed in writing.

## Copyrights and Trademarks

- By supplying text, images and other data to Purple Banana for inclusion in the Client's website or other medium, the Client declares that it holds the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the Client, or rightful copyright or trademark owner.
- Any artwork, images, or text supplied and/or designed by Purple Banana on behalf of the Client, will remain the property of Purple Banana and/or its suppliers unless otherwise agreed in writing. A licence for use of the copyright material is granted to the Client solely for the project defined in the scope or request and not for any other purpose.
- The Client may request in writing from Purple Banana, the necessary permission to use materials (for which Purple Banana holds the copyright) in forms other than for which it was originally supplied, and Purple Banana may, at its discretion, grant this and may charge for the additional usage. Such permission must be obtained in writing before any of the aforesaid artwork, images, text, or other data is used.
- 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 Client, not Purple Banana.
- By supplying images, text, or any other data to Purple Banana, the Client grants Purple Banana permission to use this material freely in the pursuit of the design.
- Should Purple Banana, or the Client 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 limitations, the Client will agree to allow Purple Banana to remove and/or replace the file on the site.
- The Client agrees to fully indemnify and hold Purple Banana free from harm in any and all claims resulting from the Client in not having obtained all the required copyright, and/or any other necessary permissions.

## Termination

- Purple Banana may terminate the provision of the Services immediately if:
  - (a) the Client commits a material breach of its obligations under these Terms and Conditions or;
  - (b) the Client is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors.
  - (c) the Client enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or
  - (d) the Client convenes any meeting of its creditors, enters into voluntary or compulsory liquidation,

has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Client, notice of intention to appoint an administrator is given by the Client or any of its directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client.

### **Intellectual Property**

- Purple Banana reserves all copyright and any other intellectual property rights (if any) which may subsist in the products of, or in connection with, the provision of the Services. Purple Banana reserves the right to take such action as may be appropriate to restrain or prevent the infringement of such intellectual property rights.

### **Liability and Indemnity**

- Purple Banana will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under these Terms and Conditions, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by Purple Banana's employees, agents or otherwise) in connection with its provision of the Services or the performance of any of its other obligations under these Terms and Conditions or this proposal or with the use by the Client of the Services supplied.
- Purple Banana will not be liable to the Client or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of Purple Banana's obligations if such delay or failure is due to any cause beyond Purple Banana's reasonable control.
- The Client shall indemnify Purple Banana against all damages, costs, claims and expenses suffered by Purple Banana arising from any loss or damage to any equipment (including that belonging to third parties) caused by the Client [or its agents or employees].
- Nothing in these Terms and Conditions shall limit or exclude Purple Banana's liability for death or personal injury caused by its negligence or for any other matters for which it would be unlawful to exclude or limit liability.

### **Force Majeure**

- Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

### **Communications**

- All notices under these Terms and Conditions shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
- Notices shall be deemed to have been duly given:
  - (a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - (b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - (c) on the fifth business day following mailing, if mailed by national ordinary mail; or
  - (d) on the tenth business day following mailing, if mailed by airmail.
- (e) All notices under these Terms and Conditions shall be addressed to the most recent address, email address or fax number notified to the other party.

### **Design Project Duration**

- Any indication given by Purple Banana of a design project's duration is to be considered by the Client to be an estimation. Purple Banana cannot be held responsible for any project over-runs, whatever the cause.

Estimated project duration should be deemed to be from the date that cleared funds are received by Purple Banana for the initial payment or by date confirmed in writing by Purple Banana.

### **Design Project Completion**

- Purple Banana considers the design project complete upon receipt of the Client's signed Approval form or signoff email. Other services such as printing, display panel production, filmwork, website uploading, publishing etc either contracted on the Client's behalf constitute a separate project and can be treated as a separate charge.

### **Design Credits**

- The Client agrees to allow Purple Banana to place a small credit on printed marketing materials with a link to Purple Banana's own website on the Client's website. This will usually be in the form of a small logo or line of text placed towards the bottom of the page. The Client also agrees to allow Purple Banana to place websites and other designs, along with a link to the Client's site on Purple Banana's own website for demonstration purposes and to use any designs in its own publicity and portfolios.

### **Confidentiality**

- Purple Banana hereby acknowledges he/she may be involved in or become aware of information that relates to the client on a personal level including information related to the client's past, future, present, customer names, marketing plans, project information, and financial documents.
- Purple Banana agrees to protect all the above information and keep any information obtained confidential.

### **Rights of Refusal**

- Purple Banana will not include in its 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. Purple Banana also reserves the right to refuse to include submitted material without giving reason. In the situation where any images and/or data that Purple Banana does include in all good faith, and subsequently discovers is in contravention to such Terms and Conditions, the Client is obliged to allow Purple Banana to remove the contravention without hindrance, or penalty. Purple Banana is to be held in no way responsible for any such data being included.

### **Cancellation**

- Cancellation of orders may be made initially by telephone contact, or e-mail, however, following this, Purple Banana will need formal notification in writing to the company's postal address. The Client will then be invoiced for all work completed over and above the non-refundable deposit that will have been made at the time of first ordering. The balance of monies due must be paid within 14 days. Please note: any cancellation which is not formally confirmed in writing and received by Purple Banana within 14 days of such instruction being issued, will be liable for the full quoted cost of the project.

### **No Waiver**

- No waiver by Purple Banana of any breach of these Terms and Conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- No failure or delay on the part of either Purple Banana or the Client to exercise any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.

### **Severance**

- In the event that one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which shall remain valid and enforceable).

## Law and Jurisdiction

- These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- Any dispute, controversy, proceedings or claim between Purple Banana and the Client relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

## Website design only

- Purple Banana requires that a template is approved by the Client before coding of a site commences. Once the template(s) for the web site are approved by the Client, coding will commence; any changes to navigation items, colours, structure or content that require changes to the template will incur an additional charge.
- Once the web design is complete, Purple Banana will provide the Client with the opportunity to review the resulting work. Purple Banana will make one set of minor changes at no extra cost within 14 days of the start of the review period. Minor changes include small textual changes and small adjustments to placement of items on the page. It does not include changes to images, colour schemes or any navigation features. Any minor changes can be notified to Purple Banana by e-mail.
- Purple Banana will consider that the client has accepted the original draft, if no notification of changes is received in writing from the customer, within 14 days of the start of the review period.

## Domain Registration

- Purple Banana cannot guarantee the availability of any domain name. Where Purple Banana is to register a domain name on behalf of a client it will endeavour to do so but the client should not assume a successful registration.

## Search Engine Submission

- Due to the infinite number of considerations that search engines use when determining a site's ranking, Purple Banana cannot guarantee any particular placement. Acceptance by any search engine cannot be guaranteed and when a site is accepted, the time it takes to appear in search results varies from one search engine to another. Rankings will also vary as new sites are added. Purple Banana recommends that Clients use a professional SEO company and are happy to provide details of such companies, but accept no responsibility for their services.

## Acceptance of Terms and Conditions and Proposal

- The placement of an order for design and/or any other services offered by Purple Banana, by email, verbally or in writing, is deemed to be acceptance of these terms and conditions.
- An estimate validated by the Client's signature on the estimate or quotation form, or by email, constitutes acceptance of the proposal and agreement to comply fully with all the Terms and Conditions and forms a Contract for Business between the signatory and Purple Banana.