

# Believe in<sup>®</sup> design, art direction & branding

The following terms and conditions will apply to current and each future request for the supply of services and/or materials received by Believe in from the Client (see definition below) from time to time unless otherwise agreed in writing. The supply of the Goods (see definition below) shall be subject to these terms, which shall take precedence over any terms and conditions of the Client.

## 1. Definitions

In these terms and conditions the following words shall have the meanings given in this clause:

1.1. 'Believe in' means Believe in Limited, whose registered office is 33-35 Southernhay East, Exeter, Devon EX1 1NX United Kingdom, a company registered in England & Wales number 6259172;

1.2. 'Brief' means the written brief describing the Goods, their intended use and any pre-set timings for supply;

1.3. 'Client' means the person, firm or company who accepts a Quotation/Proposal of Believe in for the supply/sale of the Goods or whose order for the Goods is accepted by Believe in;

1.4. 'Goods' means the services and/or materials to be supplied by Believe in to the Client;

1.5. 'Job Cost' means the fee to be charged by Believe in for the Goods and which may be specified in the Quotation/Proposal;

1.6. 'Prospective Client' means a person, firm or company to whom Believe in give a presentation of creative/marketing proposals in order to enable that person, firm or company to consider whether they wish to employ Believe in's services.

1.7. 'Quotation' means Believe in's offer to the Client to provide the Goods and which details the price to be paid by the Client;

1.8. 'Rights' means all copyright, design rights (whether registered or unregistered), patents, rights in trade marks (whether registered or unregistered), database rights or other intellectual property rights in the Goods, for the full term of those rights, worldwide.

## 2. Believe in's obligations

**Believe in will use its reasonable care and skill in the production and supply to the Client of the Goods as per the Brief and any other requirements identified by the Client.**

## 3. Price for the Goods

3.1. In return for Believe in's production and supply of the Goods the Client shall pay the Job Cost in accordance with the payment terms set out in the Quotation.

3.2. Believe in reserves the right to charge the Client interest at 4% per annum above the base rate of The Bank of England accruing daily on every invoice overdue for payment calculated from the date payment becomes due under the invoice until the date of payment.

3.3. Believe in reserves the right to require the Client to pay the total or part of the Job Cost up front before Believe in commences any work or continues any work.

3.4. If, for any reason, a job does not proceed to completion, for example (but not limited to) the Client informs Believe in that they wish to postpone completion or no longer wish to proceed with the job, then Believe in will be entitled to charge the Client for the work done and for any expenses incurred, up to the full amount of the job cost.

3.5. Where services and/or materials are supplied by Believe in to a Client, whether or not a formal Quotation has been provided, charges will be calculated mainly by reference to the time actually spent by Believe in and its staff in carrying out the work. In relation to any work Believe in carries out on behalf of the Client, work will be charged at the current hourly rate as determined by Believe in and of which the Client will be advised.

3.6. Subject to agreement to the contrary, accounts should be settled when the bill is rendered.

## 4. Brief, Goods and changes

4.1. The Client warrants that the Brief is accurate in all respects.

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**4.2.** Where a Quotation has been provided, the Client shall confirm to Believe in in writing their acceptance of the Quotation either by email, fax or post. In any event the Client shall be deemed to have accepted the Quotation within 3 working days of the Quotation having been supplied to the Client unless the Client has notified Believe in otherwise.

**4.3.** As the Job Cost and any pre-set dates for supply of the Goods will be agreed on the basis of the Brief, any changes to it after the issuing of the Quotation, whether resulting from alterations by the Client, delay in providing Believe in with materials, information, instructions or authorisations, supply of faulty materials to Believe in by the Client, or any other circumstances beyond Believe in's control, will be subject to extra charges for Believe in's time and work and may involve delays in supply. The Client will pay these extra charges and reimburse Believe in for any third party charges or expenses incurred by Believe in on the basis of the original Brief.

## **5. Approvals**

**5.1.** Written approval (which may be by way of email, fax or post) by the Client of final artwork, copy, layouts, scripts, storyboards, designs, websites and the like will be Believe in's authority to proceed with production or publication as appropriate.

**5.2.** Where artwork or other material is sent to the Client for final approval, the Client shall check it carefully and notify Believe in by e-mail, fax or post of any errors or alterations. Believe in will use its reasonable endeavours to effect any changes so notified but Believe in reserves the right to charge extra if any of these alterations either go beyond the original Brief or are notified to Believe in more than 3 working days after their supply to the Client. Where notification of errors is either delayed in this way or does not occur at all before publication, Believe in will not be liable in respect of any such errors. Believe in will also not be liable in respect of errors occurring where the Client either does not pay for proofs or mock-ups or oversees the print and production process or does not allow enough time in the production schedule to check layouts, copy, pagination or other content aspects. Believe in cannot guarantee that any or all colours will be exactly replicated in the final version as published.

**5.3.** There may be a margin of error in the number of printed items supplied by Believe in. This margin of error allows for up to 5% of the total quantity of Goods ordered with Believe in. Believe in accepts no liability for this error and agrees that the Price allows for this error.

## **6. Rights**

**6.1.** The Client shall have a royalty free licence, coming into effect on payment of the relevant invoice, to use the Goods for the purposes, and in respect of the products or services defined in the Brief. Such licence shall be automatically terminated if the Client either:

**6.1.1.** does not pay the Job Cost in full by the due date; or

**6.1.2.** (being a company) passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or

**6.1.3.** a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or

**6.1.4.** becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or

**6.1.5.** has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or

**6.1.6.** ceases, or threatens to cease, to carry on its business.

**6.2.** If the Client wishes to use the Goods in ways going beyond the parameters in the Brief it must approach Believe in for prior written consent.

**6.3.** In so far as use of the Goods involves use of third party material, Believe in will secure such licence as is necessary to allow the required use of the same.

**6.4.** Subject to the above and to the rights of any third party, ownership of the Rights shall remain vested in Believe in unless and until any assignment or other disposition of the Rights is agreed between the parties in writing.

**6.5.** For the avoidance of doubt, where Believe in makes any presentation to the Client going beyond the Brief, or makes a presentation to a Prospective Client, the Client/Prospective Client shall have no right to make use of any material contained in such presentation unless and until a separate contract is concluded between the parties.

**6.6.** Use of the Goods as per the Brief may involve the Client in continuing liability to third parties, for example for royalties, licence fees and performance fees. Believe in will endeavour to notify the Client of these as soon as practicable during the production process.

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6.7. If, during or after the period of use of the Goods envisaged in this contract, the Client wishes to use or authorise another to use any distinctive device or other part of the Goods in ways outside those contemplated in the Brief, Believe in will not unreasonably withhold its consent for such use but may make such consent conditional on prior agreement between the parties as to reasonable fees and/or royalties, if so required by Believe in.

## 7. Compliance

It shall be the sole responsibility of the Client to ensure that the Goods comply with all local laws (whether consumer, public or civil), regulations and codes in all countries in which use is intended. It shall also be the Client's responsibility to ensure that the Goods carry all disclaimers, warnings and public information which any competent lawyer of the Client in any of the relevant jurisdictions would advise. Accordingly the Client agrees to indemnify and hold harmless Believe in and Believe in's agents and employees from any liability, cost, loss, damages award, sum payable by way of settlement or other expense of any kind (including reasonable legal fees) arising from any claim, demand or action alleging that the Goods or use of them are contrary to any law, code or regulation in any country.

## 8. Publicity and examples

Notwithstanding the licence described in clause 6 above or any other disposition of the Rights agreed between the parties, Believe in shall have a continuing right to use the Goods for the purposes of advertising or otherwise promoting Believe in's work. The Client shall unless otherwise agreed mark all design work supplied as part of the Goods with the phrase 'Design — Believe in ® www.believein.co.uk' (or appropriate variants as agreed) in a suitable place. Believe in reserves the right to request the non-appearance or removal of this credit in any particular case. The Client shall comply with any such request within thirty days, but shall not thereby be obliged to make changes to material already produced or published. The Client shall, within 28 days after production or publication commences (as appropriate), provide Believe in with 12 finished printed copies of any production run or other published material derived from the Goods.

## 9. Expenses

9.1. Believe in will, where practicable, endeavour to estimate studio costs and extras such as couriers and other external services to be used in relation to the Goods, but this will not always be possible. All expenses related to a production, for example couriers, DVDs, typefaces, stock, print-outs, scans and overtime, will be invoiced by Believe in and the Client shall pay these invoices within 14 days of the date of the invoice.

9.2. Where expenses are likely to be significant, Believe in reserves the right to require the Client to pay the full amount of the expected expense in advance. General out of pocket expenses incurred in supplying the Goods, such as courier charges, travelling and hotel expenses, will be charged by Believe in at cost and the Client shall pay the relevant invoices within 14 days of the date of the invoice. Where extra expenses are incurred, either as a result of alterations to the original Brief or otherwise at the Client's request, the Client shall pay such expenses by way of settlement of the relevant invoices within 14 days of the date of the relevant invoice.

## 10. Delivery

10.1. If the Goods include any tangible goods, then delivery of such goods shall be regarded as occurring when either two business days have elapsed following the day the Client has been informed that the goods are awaiting collection or, in cases where the Goods include delivery of the goods to the Client, on the day of delivery to the Client. If the Client is unable to collect the goods as provided for above, then Believe in shall be entitled to arrange storage and/or transportation for the goods on the Client's behalf at the Client's expense. All charges for such storage, transport and any insurance shall be payable by the Client forthwith on request.

10.2. The Client shall inspect and check the goods immediately on delivery and shall give Believe in notice in writing by email, fax or post within 3 working days after the day of delivery as to any alleged defect together with details of the alleged defect. The Client will permit Believe in to inspect any allegedly defective goods. Failing such notice, the Client shall be deemed to have accepted the goods and to be liable to pay therefore.

10.3. The risk in Goods shall pass to the Client upon the commencement of supply or transportation to the Client or, where the Client will not accept supply on the date required by Believe in, to temporary storage arranged by Believe in.

10.4. Where either delivery difficulties or other circumstances necessitate Believe in electronically storing any part of the Goods for the Client's future use, Believe in reserves the right to levy storage charges and charges for retrieval from storage, which the Client shall pay within 14 days of the date of the relevant invoice.

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## 11. Trade marks and domain names

If any Goods use any trade marks, trading styles or trade names or any other images, designs or intellectual property ('Intellectual Property') owned by the Client or under its control, it is agreed that Believe in shall have the right to use or allow use of any such Intellectual Property for the purpose of fulfilling Believe in's obligations under the contract. The Client warrants that it has the right to use the Intellectual Property and the right to give permission to Believe in to use the Intellectual Property. Believe in shall not gain any rights over such Intellectual Property by virtue of such use, but Believe in shall be entitled to use the Intellectual Property both during and after the production and supply of the Goods to promote and advertise its own work. It shall be the Client's responsibility to ensure that all domain names used in connection with the Goods are wherever practicable properly registered and do not infringe any third party rights and that any Intellectual Property of the Client or any third party used in the Goods, including such Intellectual Property as are supplied by Believe in as part of the Brief, are used in a manner which neither undermines the Client's rights in its Intellectual Property nor infringes any third party rights.

## 12. Rejection or cancellation

The Client shall have no right to terminate the contract, allege breach of contract or seek any cancellation, reduction or repayment of the Job Cost on the basis of style or composition. Once the Quotation has been accepted, any subsequent cancellation by the Client will result in the Client being liable for the full Job Cost as if the cancellation had not taken place, excluding such committed third party expenses as Believe in is able to avoid liability for within its existing contractual commitments to suppliers.

## 13. Property

Where Goods are supplied to the Client on computer disks or other electronic storage method, then Believe in remains the owner of these storage media and reserves the right to require immediate return of them. Should any artwork be supplied to the Client in digital form, the Client may not amend it or otherwise use it for purposes outside those contemplated by the Brief without Believe in's express prior written permission.

## 14. Liability

**14.1.** Believe in accepts liability for its own negligence or faults in the Goods, but only to the extent stated in this clause.

**14.2.** Believe in's liability to the Client in contract law or in tort or otherwise howsoever arising in relation to the contract is limited to Believe in's charges for the Goods.

**14.3.** Believe in will not be liable to the Client for any loss or destruction of software or systems, temporary or otherwise, which occurs following use of the Goods except and to the extent that it is caused by the wilful default of one of Believe in's employees.

**14.4.** Although Believe in will endeavour to ensure that the Goods contain no software routine designed to permit unauthorised access, disable or erase existing software or software contained in the Goods or any data or hardware, Believe in shall not, except insofar as it cannot exclude its liability for death or personal injury caused by its negligence, be liable for any damage (physical or otherwise), loss or expense caused either directly or indirectly by use of the Goods.

**14.5.** Believe in shall not be liable in any way in respect of any failure, delay or defect in the supply or use of the Goods caused by the supply or specification by the Client of unsuitable material or content or by the reproduction of the Goods by a third party. Where such event could not reasonably have been prevented or controlled by Believe in, Believe in is not liable to the Client if any hardware or software used in conjunction with the Goods malfunctions, fails or is otherwise unable to communicate with other systems or Internet users (including where computer viruses have caused such failures) such that the use of the Goods is hindered or impeded.

**14.6.** In any event Believe in is not liable to the Client for the following loss or damage, howsoever caused and even if foreseeable by Believe in:

**14.6.1.** economic loss including loss of profits, business, contracts, revenues, goodwill, production and anticipated savings of any description;

**14.6.2.** loss arising from any claim made against the Client by any other person; or

**14.6.3.** loss or damage arising from the Client's failure to fulfil its responsibilities or any matter under the control of the Client.

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## 15. Believe in's status

Believe in acts as a principal and not as agent for the Client and will enter into all related contracts as principal.

## 16. Sub-contracting and assignment

Believe in may sub-contract any or all of its rights or obligations hereunder and may with the Client's consent, such consent not to be unreasonably withheld, assign the benefit and burden of its rights and obligations hereunder to any other entity.

## 17. Confidential information

Neither party shall divulge any confidential information which is supplied to it about the other party in the course of dealings or any pre-contract discussions, other than information forming part of the public domain otherwise than through a breach of this clause or any other obligation of confidence.

## 18. Termination

**18.1.** Either party may by notice in writing to the other terminate the contract forthwith upon the happening of one or more of the following events:

**18.2.** if the other shall fail to make any payment due hereunder within 7 days after the due date, or to remedy any other breach within 30 days after being required to do so in writing,

**18.3.** if the other shall be involved in any of the situations described at clause 6.1.2 - 6.1.6 above. Such termination shall be without prejudice to the parties' accrued rights and liabilities, for example, Believe in's entitlement to payment for work done.

**18.4** The Client may terminate the Contract by giving 14 days notice. In such circumstances Believe in shall be entitled to payment up to and including the stage (as specified in the Estimate) when the notice was received. Believe in shall also be entitled to reimbursement of any disbursements committed to by them on behalf of the Client prior to receiving the notice of termination, in respect of which the Client will be invoiced for (as in 3.4).

## 19. Web Hosting and Domain Names Services

**19.1** In the event that Believe in provide web-hosting or domain name services these will be for the period specified in the Estimate and will be subject to the additional terms and conditions of the relevant third party supplier as notified to the Client from time to time.

**19.2** In the event that Believe in host internet files on a server for the Client or provides a domain name for the Client, Believe in reserve the right to move those files offline and suspend the Goods and/or Services if any payment is due under the Contract.

**19.3** For the avoidance of doubt, Believe in reserves the right not to transfer any domain name provided under the Contract to the Client until payment is received in full.

## 20. Matters beyond Believe in's reasonable control

Believe in is not liable for any breach of contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes (whether or not involving Believe in's employees, weather of exceptional severity or acts of local or central government or other authorities.

## 21. Governing law and jurisdiction

These terms and conditions and any relevant interaction between the parties shall be governed by and construed in accordance with the laws of England and Wales and both parties agree to submit to **the** exclusive jurisdiction of the courts of England and Wales.