

BLACKNIGHT DESIGN - TERMS & CONDITIONS

1. Estimates

1.1 Estimates are valid for 30 days unless otherwise stated.

1.2 Estimated costs must be considered indicative until Blacknight Design has sight of client materials, such as written copy and imagery, and the planning stage for the project is complete.

1.3 Estimates include the number of pages allowed for. Additional page production will be charged on a pro-rata basis or as specified in our estimate. Unless otherwise stated, we define a page as follows:

- (i) Print : the equivalent of an A4 page layout
- (ii) Web: up to 500 words.

1.4 The cost of creating and/or including images, charts, tables and graphics, outside of the main framework of the design and not specifically detailed in our estimate, will be assessed on case-by-case basis.

1.5 Print design estimates include one set of client changes and corrections. Any additional authors' changes will be charged at our standard hourly rate.

1.6 Web design estimates include a time allowance for client changes and corrections. Additional changes will be charged at our standard hourly rate.

1.7 For print jobs we add expenses for materials, up to 5% of the total design fee, to cover colour and black and white laser proofs. If cromalin or digital proofs are to be supplied, this will be specified in our estimate.

1.8 Estimates include a 90 day warranty from date of release for any website programming errors. After 90 days, any programming fixes or changes will be charged at the standard hourly rate.

1.9 Blacknight Design's estimates and proposals are confidential and should not be shown to third parties without written permission.

2. Purchase orders

2.1 We require written authorisation before work commences. This may be in the form of a purchase order, letter or email from an authorised person referring to the job title and date of our estimate or proposal.

3. Billing

3.1 We reserve the right to bill as each project stage is complete or on a monthly basis for the work completed to date.

3.2 VAT will be charged at the standard rate on all vatable supplies unless the client can provide a letter of exemption from HM Customs & Excise.

3.3 Invoices must be paid within 30 days of invoice date. Any fees or expenses not paid by the due date will bear interest at a rate of two per cent of the amount due for each month or part of month that payment of an invoice is outstanding.

3.4 For billing purposes we define a day as a period of 8 hours. Our minimum billing period is 1 hour.

3.5 In the event that we incur out-of-pocket expenses, these expenses will be charged to clients and we may ask for money on account or as and when these expenses are incurred. We will consult our clients before incurring substantial expenses. Where relevant, VAT will be added to such expenses.

3.6 In certain circumstances, third party suppliers may require a deposit before work commences. Should this be the case, we will notify our clients and issue an invoice for immediate settlement. Blacknight Design will pay the supplier as soon as the funds have cleared.

3.7 In certain circumstances, Blacknight Design may be required to pay fees on behalf of the client for third party services such as photography, copywriting, technical programming, domain name registrations and web hosting. We reserve the right to invoice the client for these services for immediate settlement.

3.8 Any invoice queries must be raised within seven days of receipt of the invoice.

3.9 Blacknight Design undertakes to respond to any invoice queries within seven days of receipt.

4. Copyright and intellectual property rights

4.1 Blacknight Design assumes that all materials clients supply are copyright approved for the purposes of the project and that any necessary licences or releases have been obtained.

4.2 Blacknight Design will negotiate appropriate copyright on a job-by-job basis for any materials we produce or commission on behalf of our clients, such as design and artwork, copy or photography.

4.3 The ownership and sole rights of any intellectual property acquired or developed by Blacknight Design in the provision of software modules and utilities in order to provide generic functionality that might be deployed in other products remains with the technical developer.

5. Client responsibilities

We ask our clients to accept the following responsibilities to enable us to deliver the project successfully and meet requirements:

5.1 Participate fully with the process of developing the Project Plan and any requirements specifications.

5.2 Comply with the Project Plan by providing client deliverables in line with the schedule and follow procedures for approval of project stages.

5.3 Approve each project stage, using the forms we provide, so that work can commence on the next.

5.4 Provide adequate resources at the project team level and nominate a project manager ("Client Project Manager") who will be our day-to-day contact. For larger projects we may also ask clients to establish a project board consisting of two senior executives; one as the project owner and one representing the interests of the user.

5.5 Ensure that adequate editorial resources are in place or commission either Blacknight Design or a third party to fulfil this role.

5.6 Ensure that the project has the backing of any corporate programmes in place.

5.7 Ensure that adequate financial resources are available to complete the project.

6. Decisions and change management

It is vital that throughout the project all parties understand the scope. In reality there are likely to be some essential changes after the initial Project Plan is agreed and we will always do our utmost to accommodate these within budgetary and time constraints. We recommend the following practices:

6.1 Confirm all telephone agreements by email (the party initiating the discussion should send the email).

6.2 Record decisions and actions agreed in meetings in contact reports (Blacknight Design will prepare these unless otherwise agreed).

6.3 Agree changes to the Project Plan in writing.

6.4 Blacknight Design will alert the client to any issues that might have an impact on our ability to deliver in accordance with the Project Plan.

6.5 Clients are asked to notify Blacknight Design of any factors that might prevent them from meeting their project commitments.

7. Termination

7.1 Default by Blacknight Design
The client may by written notice terminate an agreement or suspend its performance of all or any of its obligations immediately and without liability for compensation or damages if:

7.1.1 Blacknight Design fails to remedy any breach of its obligations which is capable of being remedied within a reasonable time after the breach is brought to its attention by written notice from the client.

7.1.2 Blacknight Design commits serious or persistent breaches of its obligations which are not capable of being remedied.

7.2 Default by the client

Blacknight Design may by written notice terminate an agreement or suspend its performance of all or any of its obligations immediately and without liability for compensation or damages if:

7.2.1 The client fails to make punctual payment of the fees/expenses as set out in the section entitled 'Billing'.

7.2.2 The Client fails to provide the information or co-operation required as set out in the section entitled 'Client responsibilities' and as a result Blacknight Design is unable to properly fulfil its obligations.

7.3 Default by either party

Either party may by written notice terminate an agreement or suspend its performance of all or any of its obligations immediately and without liability for compensation or damages if:

7.3.1 Any distress or execution is levied against the other

7.3.2 Any composition or arrangement with creditors is made by the other

7.3.3 A receiver or administrative receiver is appointed to any of the other's property

7.3.4 The other convenes a meeting of its creditors or suffers a petition to be presented to a meeting to be convened or other action to be taken with a view to its liquidation except for the purposes of and followed by amalgamation or reconstruction.

7.3.5 The other dies or becomes bankrupt

7.3.6 The other is guilty of any grave misconduct or wilful neglect in the performance of its obligations

7.3.7 The other is guilty of any act or conduct which in the reasonable opinion of the party giving notice is prejudicial to that party's interests.

7.4 Consequences of termination
Upon termination of an agreement

7.4.1 Payment of arrears The client shall immediately pay to Blacknight Design all arrears of the fees/expenses and/or the fees/expenses reasonably payable for the services provided as soon as these have been quantified.

7.4.2 Return of property Either party will return to the other any property (including written, photographic or computer records of any kind) in its possession which belong to the other.

7.4.3 Exercise of rights Either party shall be entitled to exercise any of its rights and remedies given to it by agreement and the termination shall not affect or prejudice such rights and remedies.

7.5 Force majeure

Both the client and Blacknight Design will be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulations or if any other cause beyond the reasonable control of the parties renders performance of any agreement between them impossible, and whereupon all money due to either of the parties shall be paid immediately.

8. Disputes

In the event of a dispute between the client and Blacknight Design, a director will deal personally with the matter. If the dispute cannot be resolved, the client and Blacknight Design will appoint an independent party, by agreement, to examine any evidence provided and make recommendations for resolving the dispute. The parties agree to accept such recommendations and to do all things to resolve the dispute speedily.

9. Data Protection

9.1 The Data Protection Act 1998 requires us to advise our clients that their particulars are held on our database. We may, from time to time, use these details to send our clients information which we think will be of interest to them.

10. Law

These conditions shall be governed by the laws of England and the client agrees to submit to the non-exclusive jurisdiction of the English courts.