

TERMS AND CONDITIONS

OF

INK RETOUCH LIMITED

INTRODUCTION

These terms and conditions (the **Terms and Conditions**) govern the use of Services (as defined herein) by Ink Retouch Limited, a company registered in England and Wales at 68 De Beauvoir Crescent, London, England N1 5SB with company number 105358967 (the **Supplier**).

Please read these Terms and Conditions carefully. The Supplier may make changes to these Terms and Conditions from time to time, and will notify Clients by posting a revised version of these Terms and Conditions on its website www.ink-retouch.com. Please consult the end of these Terms and Conditions to determine when they were last revised. Use by a Client of the Services following changes to these Terms and Conditions will constitute acceptance of those changes.

1. INTERPRETATION

1.1 Definitions:

Alterations: the edit and feedback of working Images.

Additional Services: any additional services that the Client requests from the Supplier which are not set out in an Order, and which will be subject to additional fees.

Advance: has the meaning set out in in clause 6.3.

Business Day: a day between 9 am and 6 pm, other than a Saturday, Sunday or public holiday in England, when the banks in London are open for business.

Client: the person, firm or company who purchases Services from the Supplier.

Commencement Date: has the meaning set out in clause 3.4.

Estimate: a written estimate issued to the Client by the Supplier.

ETT: has the meaning set out in clause 7.2.

Deliverables: the deliverable images produced by the Supplier for the Client.

Images: the digital images, data, negatives, and other materials supplied by the Client to the Supplier.

Intellectual Property Rights: copyright and trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Client's order for Services as set out in the Client's written acceptance of the Supplier's estimate.

Proofs: draft versions of Deliverables.

PSD Files: stands for Photoshop Document files.

Schedule: the timeframe for delivering the Services as set out in the Order.

Services: the services, including the Deliverables, supplied by the Supplier to the Client as set out in an Order.

1.1 Interpretation

A reference to writing or written includes email.

2. GENERAL

2.1 These Terms and Conditions shall apply to all Orders for the supply of Services by the Supplier to the Client and shall prevail over any other documentation or communication from the Client.

2.2 Any variation to these Terms and Conditions shall be inapplicable unless agreed in writing by the Supplier.

2.3 Nothing in these Terms and Conditions shall affect the Client's statutory rights.

3. BASIS OF CONTRACT

3.1 The Client may request Services from the Supplier in writing.

3.2 Following a request from a Client in accordance with clause 3.1, the Client and the Supplier will define the parameters of the Services in respect of the Images, including but not limited to the Schedule, the rounds of Alterations, the applicable Fees, and the specifications of the resulting Deliverables.

3.3 When submitting the request for Services, the Client shall inform the Supplier of any special requirements they may have in relation to the Services, the Schedule and/or the resulting Deliverables, including but not limited to the required format, sizing, print finish and/or colour balancing.

3.4 The Supplier will then issue an estimate to the Client set out in a draft order. The draft order shall be deemed to be accepted when the Client confirms either orally or in writing or by delivery by the Client of any Images to the Supplier at which point it shall become a confirmed and binding Order (**Commencement Date**).

4. SUPPLY OF SERVICES

4.1 In supplying the Services, the Supplier shall:

4.2.1 use reasonable endeavours to provide the Services in accordance with the Order in all material respects;

4.2.2 perform the Services with reasonable care and skill; and

4.2.3 ensure that the Deliverables are of satisfactory quality and are fit for purpose.

4.2 Any Additional Services that the Client requires from the Supplier will be subject to the Supplier's further written agreement and will be provided at the Supplier's rate or amount as set notified to the Client by the Supplier from time to time. The Supplier reserves the right not to undertake any such Additional Services until the Fee for the Services set out in the Order has been paid in full.

4.3 All Services are dependent upon the timely delivery to the Supplier of the agreed number and format of Images and upon the payment of any agreed Advance.

5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

(a) ensure that the terms of the Order are complete and accurate;

(b) co-operate with the Supplier in all matters relating to the Services;

(c) provide the Supplier, its agents, subcontractors, consultants and employees, with the agreed number and format of Images set out in the Order; and

(d) ensure that any Advance and Fees are paid in accordance with these Terms and Conditions.

5.2 If the Supplier's performance of any of its obligations under an Order and/or these Terms and Conditions is prevented or delayed by any unforeseen delay or any act, omission, failure of the Client, its agents, consultants or employees, the Supplier shall:

(a) have the right to suspend performance of the Services;

(b) not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay; and

(c) be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

6. FEES & EXPENSES

6.1 In consideration for the supply of the Services, the Client shall pay the Supplier the Fees in accordance with this clause 6.

- 6.2 Unless otherwise stated by the Client, the Fees for the Services shall be calculated on a per image basis combined with the Supplier's assessment of the Client's requirements as set out in the Order. The Supplier reserves the right to review the Fees at any time prior to confirmation of an Order.
- 6.3 Where applicable, the Supplier reserves the right to require 50% of the Fees as an advance payment to be paid prior to commencement of the Services (**Advance**). This Advance shall be non-refundable unless the Order is cancelled by the Supplier without cause.
- 6.4 If the Order is cancelled by the Client 72 hours prior to the delivery of the Images, the Supplier shall be entitled to invoice the Client for all the Fees and expenses with any reduction being entirely at the discretion of the Supplier.
- 6.5 If the Order is cancelled by the Client up until 72 hours before the delivery of the Images, the Supplier shall be entitled to either (1) retain the Advance, or (2) where no Advance has been paid, invoice the Client for an administration fee of 50% of the total Fee, which shall be payable on receipt of the invoice.
- 6.6 The Supplier reserves the right to charge the Client for any expenses reasonably incurred by the Supplier for the performance of the Services (including but not limited to couriers, print-outs and scans). The Supplier shall use reasonable endeavours to notify the Client of any expenses beforehand.
- 6.7 If the Client requires any Additional Services, the Supplier reserves the right to amend the Fees payable.
- 6.8 The Supplier shall invoice the Client on final acceptance (or deemed acceptance) of the Proofs for all remaining Fees and any expenses.
- 6.9 The Client shall pay each invoice submitted by the Supplier:
- 7.7.1 within 30 days of the date of the invoice, unless the Client and the Supplier have agreed shorter payment terms in the Order; and
 - 7.7.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 6.10 Time for payment shall be of the essence of these Terms and Conditions.
- 6.11 All Fees and expenses payable by the Client exclude amounts in respect of value added tax (**VAT**), which the Client shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

6.12 If the Client fails to make a payment due to the Supplier under an Order by the due date for payment, then, without limiting the Supplier's remedies under clause 14:

7.10.1 the Supplier reserves the right to charge interest on the overdue amount at the rate of 4% above the Bank of England's base rate from time to time, but at 4% when the base rate is below 0%. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Client shall pay the interest together with the overdue amount; and

7.10.2 the Supplier may suspend all Services until payment has been made in full.

6.13 Each Order is non-cancellable. The Supplier shall be entitled to invoice the Client for all Fees and expenses with any reduction being entirely at the discretion of the Supplier.

6.14 All amounts due under an Order shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. SCHEDULE

7.1 The Order shall specify the agreed Schedule for the Services, including the agreed number of rounds of Alterations.

7.2 The Supplier shall use reasonable commercial efforts to meet any scheduling dates specified in the Order and deliver the Deliverables to the Client within any estimated turnaround time agreed in writing (**ETT**).

7.3 Any ETT is an estimate only and is based upon receipt by the Supplier of any agreed Advance and all necessary Images. Time for performance by the Supplier shall not be of the essence for performance of the Services.

7.4 The Client acknowledges that the ETT may be subject to change, and provision of the Services delayed, where any Images contain errors or omissions of any kind, are incorrectly formatted or incomplete or do not comply with any guidelines given by the Supplier.

7.5 Where the Client fails to deliver the Images by the delivery date agreed in the Order this may in turn alter the final delivery of the Deliverables and the ETT.

8. PROOFS AND ALTERATIONS

8.1 At the Client's request, the Supplier may submit Proofs to the Client either electronically or via proof print for the Client's feedback as per the agreed number of rounds of Alterations or for approval and sign-off.

- 8.2 The Supplier shall provide the agreed number of rounds of Alterations as specified in the Order. Such Alterations must be within the original scope of the Order to fall within the agreed Fees.
- 8.3 Additional rounds of Alterations may be ordered as Additional Services.
- 8.4 Use of the Proofs (by publication, broadcast, reproduction etc.) by the Client at any stage shall also be deemed as acceptance of Proofs and no further Alterations will be made within an Order.
- 8.5 The Supplier shall use reasonable endeavours to effect any Alterations so notified but reserves the right to charge an additional fee if, in the Supplier's reasonable opinion, any Alterations exceed the scope of the Services as set out in the Order.

9. TURNAROUND TIME AND DELIVERY

- 9.1 Delivery of the Deliverables shall be in the format agreed in the Order.
- 9.2 It is the Client's responsibility to provide and maintain a correct and working email access for the receipt/transmission of any Proofs or working PSD Files and any other data as part of the Services.
- 9.3 The Supplier does not accept any liability for the Client's inability to receive, access and/or transmit Proofs or working PSD Files.

10. STORAGE AND ARCHIVING

- 10.1 Unless the Supplier otherwise agrees in writing on the Order, the Supplier will store the Deliverables for one month after delivery to the Client.
- 10.2 If the Client requires archiving services beyond one month the Supplier shall be entitled to charge an additional fee for such storage/archiving at such rate as the Supplier may notify to the Client from time to time.
- 10.3 The Supplier shall take all reasonable precautions to ensure the Deliverables are stored safely and securely. In the event of a break-in, the Supplier shall not be liable for the loss of the Images, Proofs or Deliverables or for any resulting delays to the provisions of Services.

11. INTELLECTUAL PROPERTY RIGHTS; INDEMNITY

- 11.1 The Supplier owns all Intellectual Property Rights in connection with the Services including but not limited to the Proofs and the working PSD Files, other than the Images which shall belong to the Client.

- 11.2 The Client represents and warrants that it owns all Intellectual Property Rights in relation to the Images and grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to store, copy, use, amend, adapt, process, print, manipulate, edit and/or otherwise change any Images provided by the Client for the purposes of providing the Services to the Client and otherwise complying with these Terms and Conditions.
- 11.3 The Supplier owns all Intellectual Property Rights to the Deliverables, but only until the point at which full payment of Fees and expenses is received in accordance with these Terms and Conditions, at which point the Intellectual Property Rights to the Deliverables will pass to the Client.
- 11.4 The Client hereby agrees to fully indemnify and keep the Supplier indemnified against any and all claims, demands, damage, loss, payments, liability and expenses (including legal fees) or whatsoever nature and howsoever arising as a result of any breach by the Client of these Terms and Conditions including without limitation any misrepresentation, failure, negligence and/or breach.
- 11.5 Where set out in an Order, the Client shall ensure that any use of the Deliverables (whether by the Client or a Client licensee) shall contain a credit materially in the form “*Post-production by ink*” in respect of each and every use of the Deliverables, including without limitation re-runs and whether such use is commercial or otherwise.
- 11.6 The Client grants to the Supplier a non-exclusive, royalty-free, non-transferable licence to use the Deliverables on its website to showcase their portfolio.

12. DATA PROTECTION

- 12.1 The Supplier will collect personal data in accordance with its Privacy Policy available on our website.
- 12.2 The Supplier shall take all reasonable precautions to protect cyber security. In the event of a cyber-attack, the Supplier shall not be held responsible for the loss of Images, Proofs or Deliverables or any resulting delays in the provision of Services.

13. LIMITATION OF LIABILITY

- 13.1 Nothing in these Terms and Conditions limits any liability which cannot legally be limited, including but not limited to liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation; and

- (c) breach of terms implied by section 2 of the Supply of Goods and Services Act 1982.
- 13.2 References to liability in this clause 13 include every kind of liability arising under or in connection with these Terms and Conditions including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 13.3 Nothing in this clause 13 shall limit the Client's payment obligations.
- 13.4 The Supplier's liability for all claims directly or indirectly connected to any matter, whether in negligence or otherwise, to the Client in respect of an Order shall be limited to a sum equal to the Fees specified in an Order.
- 13.5 The Supplier shall not be liable for the cost of re-shooting or re-printing the material or Images.
- 13.6 The Supplier shall not be liable for any failure to perform the Services due to circumstances beyond the Supplier's control including any event of force majeure.
- 13.7 The Supplier shall not be liable to the Client for any other losses whether under these Terms and Conditions or otherwise, including any loss of business, contracts, profits, anticipated savings, goodwill, or revenue, or for any direct or indirect or consequential loss whatsoever incurred by the Client and whether caused by the Supplier, the Supplier's employees, agents and/or sub-contractors.
- 13.8 The Supplier shall not be liable arising for any losses or costs incurred by the Client from submitting Images in any unsupported formats.
- 13.9 This clause 13 shall survive the termination of these Terms and Conditions.

14. TERMINATION

- 14.1 Without affecting any other right or remedy available to it, either party may terminate an Order with immediate effect by giving written notice to the other party if:
 - (a) the other party commits a material breach of any term of these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
 - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of

a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under these Terms and Conditions has been placed in jeopardy.

14.2 Without affecting any other right or remedy available to it, the Supplier may terminate an Order with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under an Order on the due date for payment.

14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services between the Client and the Supplier if:

- (a) the Client fails to pay any amount due under an Order on the due date for payment;
- (b) the Client becomes subject to any of the events listed in clause 14.1(b) or clause 14.1(c), or the Supplier reasonably believes that the Client is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of an Order:

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall not have the right to reuse Deliverables which haven't been paid for.

15.2 Termination of an Order shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of an Order which existed at or before the date of termination.

15.3 Any provision of an Order that expressly or by implication is intended to come into or continue in force on or after termination of an Order shall remain in full force and effect.

16. GENERAL

16.1 **Force majeure.**

The Supplier shall not be in breach of these Terms and Conditions nor liable for delay in performing, or failure to perform, any of its obligations under an Order if such delay or failure result from events, circumstances or causes beyond its reasonable control including but not limited to any inability of the Supplier to secure labour, materials, supplies or transport, scarcity of fuel, power or components, breakdown or machinery, fire, storm, flood, acts of God, internet failure, war, civil disturbance, strikes, lockdowns or industrial action (each an **event of force majeure**).

If any event of force majeure occurs, the date(s) for performance of the Supplier's affected obligation(s) shall be postponed for as long as is made necessary by the event of force majeure. If any event of force majeure continues for a period of or exceeding 60 days, the Client may cancel the affected Order (or the affected part(s)) by written notice to the Supplier.

16.2 Assignment and other dealings.

The Supplier may at any time assign, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under these Terms and Conditions.

The Client shall not assign, transfer, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these Terms and Conditions without the prior written consent of the Supplier.

16.3 Confidentiality.

The Client may be required to sign a Non-Disclosure Agreement prior to receiving the Services, in such form as may be reasonably specified by the Supplier.

16.4 Entire agreement.

- (a) Each Order and these Terms and Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into these Terms and Conditions it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms and Conditions. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms and Conditions.

16.5 Waiver.

A waiver of any right or remedy under these Terms and Conditions or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under these Terms and Conditions or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.6 Severance.

If any provision or part-provision of these Terms and Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision or part-provision of these Terms and Conditions deleted under this clause 16.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with an Order shall be in writing.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (ii) if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.7(b)(ii), business hours means 9.00am to 6.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 16.7 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

16.8 Third party rights.

Unless it expressly states otherwise, these Terms and Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term.

16.9 Governing law.

Each Order, Terms and Conditions or any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

16.10 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms and Conditions or its subject matter or formation.

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