

[brightstorm](#) : terms and conditions

1. Definition of Terms

01. In these General Conditions: 'Brightstorm Limited' means Brightstorm Limited; 'Client' means the party to whom Brightstorm Limited has agreed to provide the Services and who therefore agrees to abide by these General Conditions; 'Services' means the services to be performed by Brightstorm Limited, including those that enable the Client to gain access to the Internet via dial-up connection and registration of web addresses; 'Goods' means the physical items which are to be delivered as part of the Service; 'Design' means graphic or other design, website creation, construction and posting on the Internet; 'Name' means the name assigned to the Client in relation to the provision of the Service including any mailbox and web address.

2. Sole Conditions

01. These General Conditions together with the estimate, if any, are the basis of the agreement and should be read as one document ('the Agreement'). They are the sole conditions on which Brightstorm Limited contracts with the Client. Variations to the Agreement may be made only with the consent of Brightstorm Limited and are effective only if submitted in writing and signed by a duly authorised representative of Brightstorm Limited.

3. Price and Payment

01. Any estimate is valid for two (2) months after it is given and is based on Brightstorm Limited's current costs of production and will only be subject to amendment by Brightstorm Limited once any additional costs are reviewed and approved by the Client. Estimates are based on the brief given by the Client. Changes to the brief and amendments which result in additional work will be charged extra.
02. The Client will pay all charges, costs and expenses incurred by Brightstorm Limited in connection with the Services.
03. Brightstorm Limited will issue an invoice on completion of the Services. However, on a project where, in Brightstorm Limited's opinion, significant costs have been incurred by Brightstorm Limited on the Client's behalf, monthly invoices may be issued.
04. At commencement of the project, Brightstorm Limited will usually issue an invoice for 25% of project price which is payable immediately as deposit for the project.
05. The client will pay the invoice within 14 days of its date. Failure to pay the sums due within the 14 day period entitles Brightstorm Limited, without prejudice to its other rights and remedies, to:
 - a. charge interest from the date of the invoice on the sums outstanding (after as well as before judgement) at the rate of 4.5% above the base rate from time to time of HSBC plc;
 - b. suspend work on the Services until all sums outstanding have been paid.
06. Value added tax shall be charged on all fees and disbursements, where applicable, at the current rates on the date of the invoice.
07. Time for payment shall be of the essence of this Agreement.

4. Proofs and Production

01. A charge may be made by Brightstorm Limited to cover any additional work involved where copy, images or other material supplied by the Client is not clear and legible or where such material supplied digitally is not retrievable on Brightstorm Limited's computer equipment

only after advising and allowing the Client 21 days to resubmit usable material.

02. Unless agreed with the Client, proofs of all work shall be submitted for the Client's approval and Brightstorm Limited shall incur no liability for any errors not corrected by the Client in proofs so submitted or if the Client instructs Brightstorm Limited to proceed without submission of proofs.
03. The Client's alterations and any additional proofs resulting from the Client's alterations and not specifically included in an estimate shall be charged extra. When design or content are left to the judgement of Brightstorm Limited, changes therefrom made by the Client shall be charged extra.
04. Unless otherwise agreed, paper proofs will be produced in black only. Due to differences in equipment, processes, paper, inks, pigments and other conditions between colour proofing and production operations, a reasonable variation in colour between colour proofs and the completed job shall constitute acceptable performance of the Services by Brightstorm Limited.
05. Every effort shall be made to ensure good reproduction of printed material. However, the limitations of printing processes, especially when time is limited, may affect the finished item.

5. Materials Used in Performing the Service

01. Plates, film, tapes, disks and other materials used by Brightstorm Limited in the execution of the Service shall remain the exclusive property of Brightstorm Limited.
02. Materials referred to in 5.1 may be delivered to the Client immediately after the Services are executed.

6. Internet Services

01. Unless otherwise agreed in writing, half of Brightstorm Limited's estimated fee for providing Internet Services is payable in advance of work commencing on the Service. The remainder is due on completion of the Service OR Brightstorm Ltd will invoice monthly where credit has been arranged and issue a balance invoice on completion.
02. Brightstorm Limited shall use its best endeavours to achieve a high-quality Service. However, Brightstorm Limited cannot guarantee to provide a fault-free service due to the technically complex nature of the Service provided.
03. Brightstorm Limited or its suppliers may temporarily suspend the Service in order to upgrade, repair or maintain the telecommunication link, hardware or software.
04. Brightstorm Limited or its suppliers may alter the technical specification of the Service for operational improvements or amendments.
05. The Client agrees not to use any Name, Electronic Mail Address, Domain Name, Trademark, or Patented name that is in breach of statute or common law or that infringes the rights of the individual or accepted Internet parameters.
06. Brightstorm Limited will use its best endeavours to maximise access to and uniformity of any website it creates but cannot be held responsible if some computers or some browsers are unable to view the website or for the website's appearance on screen unless viewed through Netscape 6 or above or Microsoft Internet Explorer Version 6 or above and a display of 800 by 600 pixels unless otherwise specified.
07. The Service may be suspended and not restored if the Client (or any third party):
 - a. sends or receives materials or data that is offensive, abusive, indecent, obscene or menacing; or in breach of confidence, copyright, privacy or any other rights; or sends material which may cause annoyance or inconvenience.
 - b. interferes with or disrupts network users, services or equipment including unauthorised entry to any computers on the Internet.
08. Brightstorm Limited shall accept no liability whatsoever for the transmission or receipt of any information or data of whatever nature or format.

7. Advertising and Public Relations Services

01. If requested by the Client and where time permits, a production estimate shall be supplied. It is in the nature of production that the final invoiced charge may differ from the estimate, the difference depending on the number of publications used, changes in quantity or size of advertisement, the urgency of the job, alterations made by the Client and the job's complexity.
02. Brightstorm Limited requires that certain items be pre-paid, including but not exclusively postage for direct mail campaigns and work relating to exhibitions.
03. Hand drawn layouts and any text typed on draft copy sheets may be altered by the Client without incurring extra charges. However, following approval and production of finished artwork all alterations shall be charged extra.
04. Estimated costs of media shall be the amounts payable by the Client irrespective of costs or charges invoiced to Brightstorm Limited by its suppliers.
05. The Client agrees to adhere to the copy and cancellation deadlines of the media. The Client is responsible for payment for space if the cancellation deadline is passed.
06. If the Client cancels advertisements and does not complete the full schedule of bookings placed with media, the advertising rates for those placed may be adjusted.
07. A monthly retainer is payable by the Client to cover executive time spent researching, writing and organising a public relations campaign. The retainer does not relate to the amount of editorial coverage and no guarantees of coverage are given.

8. Materials Supplied by the Client

01. Brightstorm Limited will use its best endeavours to ensure the careful handling of client's property.
02. The Client's property and all property supplied to Brightstorm Limited by or on behalf of the Client shall while it is in the possession of Brightstorm Limited or in transit to or from Brightstorm Limited be deemed to be at the risk of the Client unless otherwise agreed in writing and the Client should insure accordingly.
03. Estimates are prepared on the assumption that materials when supplied by the Client, including artwork and reproduction copy, will be suitable for their purpose. Additional work, including retouching and similar work which may be required when materials are found to be unsuitable may be charged for and Brightstorm Limited reserves the right to reject any material which appears, in its discretion, to be unsuitable.
04. Where such materials are so supplied or specified, responsibility for defective Goods or Services will not be accepted by Brightstorm Limited unless it is due to Brightstorm Limited's failure to use reasonable skill and care.

9. Time

01. Unless it is agreed in writing and except as provided in Clause 3.7 time is not of the essence for the performance or completion of the Services.

10. Title

01. Title to the Goods will pass to the Client on the later of:
 - a. complete payment for all the Services;
 - b. delivery to the Client.
02. Risk of loss or damage to the Goods shall pass to the Client immediately on leaving Brightstorm Limited's premises.
03. The Goods shall remain Brightstorm Limited's sole and absolute property as legal and beneficial owner until payment in full for the Services has been received by Brightstorm

Limited in accordance with the terms of this Agreement. While the Goods remain the property of Brightstorm Limited the Client shall keep the Goods identifiable and separate from all other goods in its possession.

04. Until payment has been received in full by Brightstorm Limited the Client shall be under an obligation to redeliver the Goods to Brightstorm Limited if Brightstorm Limited so requires.
05. If the Client sells any of the Goods before the title to the Goods has passed to the Client, the Client shall hold the proceeds of such sale on trust for Brightstorm Limited.

11. Intellectual Property Rights

01. The copyright for all designs, text, advertising, slogans, programming source code, source media, database procedures and other technical processes (and intellectual property rights underlying or subsisting in any of the same) written, designed or otherwise created by Brightstorm Limited, whether used as part of the Service or not, become the property of the Client upon completion of the Service.
02. Brightstorm Limited grants to the Client full ownership in respect of all intellectual property rights as Brightstorm Limited has in relation to materials comprised in the Service.
03. Materials incorporated into the Service whose intellectual property rights belong to a third party and are included on licence from that third party are excluded and no right of use beyond their immediate use in the Service should be implied unless ownership has been obtained by either Brightstorm Limited or the Client.
04. By appointing Brightstorm Limited to provide the Service the Client confirms that it possesses the right to reproduce all materials that it supplies. Any resulting violation of copyright and action brought by a third party will be the liability of the Client alone.
05. The expression 'intellectual property rights' in this clause means any intellectual property rights, including rights in, or to apply for, patents, rights in, or to apply for registered designs, copyright, software, unregistered design rights and trademarks or rights similar to these, wherever exercisable in the world, and for the full term of any such rights.

12. Illegal Matter

01. Brightstorm Limited shall not be required to produce, publish or issue any matter which, in its opinion, is or may in the production, publication or issue be illegal, libellous or an infringement of the proprietary or other rights of a third party.

13. Delivery

01. The Goods shall be delivered to the address of the Client which may be specified in the estimate. Delivery may be effected by any means which Brightstorm Limited in its opinion thinks appropriate.
02. Unless otherwise specified, the cost of delivery of the Goods and of all proofs involved in the Services shall be payable by the Client.
03. Brightstorm Limited shall be entitled to request and receive all payment in advance for postage necessary to perform a bulk mailing on behalf of the Client.
04. Brightstorm Limited shall be entitled to a reasonable financing charge on all deliveries not paid in advance and a handling charge on freight and courier services to cover administration, handling and materials.
05. Brightstorm Limited shall not be liable for any loss or damage to the Goods whilst in transit.

14. Subcontractors

01. In performing the Services Brightstorm Limited is entitled at its own discretion to employ subcontractors.
02. Brightstorm Limited reserves the right to change subcontractors at any time without notice.

15. Variation in Quantity

01. Brightstorm Limited will use its best endeavours to deliver the quantity of printed items ordered but estimates are conditional upon a margin of 5 per cent for work in one colour only and 10 per cent for other work being allowed for overs or shortage, the same to be charged or deducted.

16. Warranty

01. Brightstorm Limited warrants that the Services will be performed by competent persons exercising skills appropriate to their function. If any faulty work is demonstrated to result from a serious failure to exercise such skills which is reported to Brightstorm Limited within 14 days after performance by Brightstorm Limited of such work Brightstorm Limited will at its own option either remedy free of charge to the Client the faulty work or, if applicable, refund the price paid for the Services by the Client.
02. If a warranty claim is found on investigation to be outside Brightstorm Limited's responsibility under clause 16.1, Brightstorm Limited may charge the Client for all costs and expenses incurred by Brightstorm Limited in consequence of such investigation.

17. Liability and Indemnity

01. Brightstorm Limited is liable only for death or personal injury resulting from its own negligent acts or omissions, and for any other liability stated in these conditions.
02. Except as provided in Clause 16 and Clause 17.1 Brightstorm Limited shall not be liable for any negligent act, breach of contract or breach of statutory duty or for any indirect or consequential loss or damage.
03. The liability of Brightstorm Limited in these conditions excludes and replaces all other conditions or obligations imposed or implied by common law, statute law, usage or otherwise.
04. Without affecting the general nature of Clauses 16 and 17, Brightstorm Limited specifically excludes all warranties, conditions or obligations imposed or implied by common law, statute law, usage or otherwise in relation to the Services and the quality, use, condition, description or fitness for any particular purpose of any goods, equipment or materials Brightstorm Limited obtains or purchases and uses in connection with the Services. The exclusion does not affect the statutory rights of the Client if Brightstorm Limited sells the Goods in a consumer sale as defined by the Sale of Goods Act 1979.
05. The Client agrees to indemnify Brightstorm Limited against any costs, claims, damages, demands, actions and liabilities that Brightstorm Limited incurs or suffers arising out of or in connection with the Services (including legal fees on an indemnity basis), unless they arise as a direct result of Brightstorm Limited's negligence or of that of its employees or agents.

18. Financial Services Act

01. To the extent that the Services amount to an investment advertisement under Section 57 (2) of the Financial Services Act 1986 the Client warrants either:
 - a. that it is an authorised person under Chapter 111 Part 1 of the Act; or
 - b. that such advertisement has been approved by an authorised person under Chapter IV Part 1 of that Act; or
 - c. that such advertisement was permitted under section 58 of that Act.

19. Breach

01. In the event of the Client committing any breach of this Agreement, or if any distress or execution is levied upon the Client, his goods or assets, or if the Client enters into any

negotiations for arrangement or composition with or for the benefit of his creditors or becomes bankrupt, or if any petition in bankruptcy shall be presented against him, or if, being a corporate body, the client shall be wound up or if any resolution is proposed or petition presented to wind up the Client or if a receiver or an administrative receiver of the Client's assets or undertaking or any part shall be appointed or if the Client shall be deemed to be unable to pay its debts, or if a petition is presented for an administration order against the Client, Brightstorm Limited shall be entitled, without prejudice to any other claim or right or remedy which it may have:

- a. to suspend any or all deliveries until the default has been made good or to determine the contract or any unfulfilled part and be entitled to charge for work already carried out (whether completed or not) and material purchased for the Client, such charge to be an immediate debt due to Brightstorm Limited;
- b. in respect of all unpaid debts due from the Client have a general lien on all goods and property in its possession and shall be entitled to dispose of such goods in such manner and at such price as Brightstorm Limited thinks fit and to apply the proceeds towards such debt.

20. Claims

01. Any goods rejected as not complying for whatever reason with an order must be so rejected in writing within 14 days of receipt or publication. Goods damaged in transit must be kept in their original packaging for inspection.

21. Waiver

01. The failure of Brightstorm Limited at any time to enforce any provision of this Agreement will in no way affect its right thereafter to require complete performance by the Client, nor will the waiver of any breach of any provision be a waiver of the provision itself. Any waiver to be effective must be in writing.

22. Law and Jurisdiction

01. These conditions will be governed by the laws of England and Brightstorm Limited and the Client submit to the jurisdiction of the English courts.

23. Other Provisions

01. Unless otherwise instructed in writing Brightstorm Limited reserves the right to make public in promotional or other material its role in carrying out the Services.
02. Brightstorm Limited reserves the right to suspend the Clients use of the Service if it is having a detrimental effect upon the Service received by any of Brightstorm Limited's other clients or the clients of its suppliers once a full explanation of the detrimental effect is provided to the Client and the Client is allowed 30 days to rectify the situation.

24. General

01. Brightstorm Limited shall be entitled, without liability on its part and without prejudice to its other rights, to terminate the contract or any unfulfilled part, or at its option to suspend or make partial deliveries or extend the time or times for delivery, if the performance by Brightstorm Limited of any of its obligations under the Agreement is hindered or delayed whether directly or indirectly by reason of the Client failing to furnish necessary instructions or information, or by war or other hostilities, civil commotion, act of God, government action or legislation, interruption of transport, strike, lockout or other forms of industrial action, accidents or stoppages to works, shortage of labour, materials, equipment, fuel or power, breakdown of machinery or any other cause whatsoever beyond the reasonable control of

Brightstorm Limited or its subcontractors, whether or not such cause exists at the date of the Estimate. During the continuance of such a contingency the Client may by written notice to Brightstorm Limited elect to terminate the Agreement and pay for work done and materials used but otherwise shall accept delivery when available.

02. If any part, term or provision of this Agreement, not being of a fundamental nature, is held illegal or unenforceable, the validity or enforceability of the remainder of this Agreement will not be affected.
03. This Agreement is the complete and exclusive statement of the agreement between both parties and supersedes all prior agreement, oral or written, and all other communications between both parties concerning the subject matter of this Agreement. The Client acknowledges that no reliance is placed on any representation made but not embodied in this Agreement.
04. All notices required or permitted to be given under this Agreement will be in writing and sent by letter, fax, email or delivered by hand to the address of the receiving party specified in the Estimate or such other address as the receiving party may from time to time designate. This contract is subject to English Law and the exclusive jurisdiction of the English Courts.



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