

best practice paper:

# **international conditions of contract and engagement for designers**

**ico-D. Leading creatively.**

ico-D is the world body for professional design. It is a non-profit, non-partisan, member-based network of independent organisations and stakeholders working within the multidisciplinary scope of design and expanded media. Founded in 1963, ico-D actively promotes the value of design practice, thinking, education, research and policy, representing more than 140 organisations in 67 countries and regions globally.

ico-D's members believe in interdisciplinary collaboration and the effectiveness of a collective voice to represent the design industry.

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## Introduction

The following Code is published by ico-D for the guidance of Member organisations and their individual members, as well as for members' clients.

ico-D member organisations may enforce additional clauses as may be appropriate to local customs and requirements.

For the purpose of this document, 'members' refers to designers who are members of organisations affiliated with ico-D, irrespective of whether they practice as freelance designers, act as principals of their own business, or conduct a design practice in partnership or association with non-members.

Any question which may arise as to the interpretation of the Code shall be referred, in the first instance, to the Council of the appropriate organisation or Member of ico-D. In cases of doubt, guidance shall be sought from the ico-D Secretary General for clarification by the ico-D Executive Board.

For the purpose of this document, the word 'originator' refers to the author or creator of the work subject to the contract.

The words 'originals' or 'work' refer to any designs created by the originator, whether they are submitted as rough sketches, drawings, dummies, models, photo prints, finished artwork, layouts, type specifications or similar works.

### Conditions of engagement

- Commissions and engagements of design services shall always be confirmed in writing, the form of service and fees being stated with conditions appropriate to the commission of the engagement. Designers' services may cover the preparation of design, advisory services, attendance at meetings or any combination of these functions.
- The person or persons authorised to issue instructions to the designer on behalf of the client shall be specified by the client.
- Exclusive services in a particular field of design may be secured by agreement between the client and the designer.
- The designer shall ascertain from the client if a freelance or consultant designer is already employed by the client in respect of the commission or engagement which he/she is being offered.\*
- When a client engages two or more designers to do the same job in competition, the designer shall obtain from the client disclosure of this arrangement as well as the name or names of other designers involved.

\*Corporations will often employ many freelance designers, and thus disclosure is only significant in relation to the job in question.

### Right of possession

- Transfer of the right of reproduction does not give the client right of possession.
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- Unless otherwise agreed, sketches and originals in any form and material are the property of the originator and must be returned to him/her as soon as possible after the intended use.
- Unless otherwise agreed, sketches or roughs must not be used for any other purposes than that for which they were originally commissioned.
- In the case where the finished work is to be carried out by someone other than the originator, his/her prior consent must be obtained.

- To protect the client and the originator, the originator's work must be treated as confidential until after it has been reproduced.
- The originator's work, sketches as well as originals, shall be treated carefully and must not be broken, soiled or in any way damaged in handling. If so, the party responsible for the damage shall be responsible for the costs of making good or replacement necessitated by such damage.
- Unless otherwise agreed, ideas sketches and originals commissioned from the designer, and not used within six months after the time of delivery, are to be returned immediately thereafter to the originator.

#### Transfer of reproduction rights

- **For Limited Purposes and Editions**

Unless otherwise agreed, the originator transfers part of the rights of reproduction only for limited purposes and for a number of prints or editions to be specified. The conditions of the contract shall define the use, form, size, reproduction method, number of colours, quantity, possible extension of use, and country or countries where the originator's work or reproduction thereof will be used.

Any rights not specifically stated shall remain the property of the originator.

- **In Total, for Unlimited Use**

Transfer of the total rights of reproduction gives the client the right of unlimited use for unlimited editions, including uses not foreseen by the originator. Originals such as trademarks, which are intended for unlimited use, because of their purpose, belong to this category.

- Unless otherwise agreed, transfer of rights of reproduction as under For Limited Purposes and Editions is applicable only for use in the country of origin and for the first edition. Application should be made to the originator before further use of his/her original work or the printing of new editions is contemplated.
- The client may not transfer the rights of reproduction to a third person without the originator's consent, unless this is done in connection with the transfer of the ownership of a company or part thereof. The originator, however, shall be entitled to veto the transfer, if in his/her opinion such transfer may injure his/her reputation.

### Signing of work

- The originator shall be entitled to sign his/her work or similarly claim authorship.
- The originator's signature on his/her work, whether this be in his/her own writing, typesetting or as a symbol, must not be changed or removed without his/her consent.

### Alterations, amendments or adaptations

- The originator's work shall not be changed, altered, amended or adapted by anyone without his/her consent.
- If the originator agrees that alterations, amendments or adaptations can be carried out by someone else, his/her consent shall be obtained in writing and he/she reserves the right to check and approve such work.

### Standards of reproduction

- The originator shall be entitled to claim satisfactory reproduction of his/her work by the most suitable process.
- Reproduction in different colours or by other methods than those originally agreed with the originator must not be carried out without his/her consent.

### Checking of proofs

- The originator shall be entitled to supervise the reproduction.
- Proof specimens shall be submitted to the originator for his/her approval before proceeding with production.
- The originator shall be entitled to refuse permission for publication of any unsatisfactory rendering of his/her work and execution thereof. This does not apply in cases where the total rights of reproduction have been transferred and fully paid for. In such cases the originator shall, however, be entitled to refuse permission for his/her name to be linked in any way with such a reproduction.
- In countries not conforming to the Berne Convention in respect of copyright practices, designers are advised to make acceptance of the Conditions contained in the ico-D Model code of professional conduct part of their contracts or agreements with clients.

### Free specimens

- The originator shall be entitled to receive, free of charge, at least 10 reproductions of his/her work and at least 1 specimen in case of 'deluxe' editions or limited editions of less than one thousand copies.
- In the case of wallpaper, textiles and similar pattern design, the originator shall be entitled to receive at least ten running of square metres (or comparable quantity) of each design produced.
- Where the work is of such a nature that it is not suitable or intended for normal production methods, the originator shall be entitled to receive, free of charge, a black and white negative, a colour transparency or 10 photo prints 18 × 24 cm (6"× 8") in black and white or colour.
- Specimen copies received by the originator may be used by him/her for exhibition, publicity and promotional purposes.

### Design credit and publicity

- Full design credit shall be given to the originator in all cases where this can reasonably be expected, particularly on editorial or publicity releases, photographs for publicity purposes and in all such cases where the printer or supplier of the published work wishes to display such designs for advertising of his own services.
- The originator may use his/her work or reproduction thereof for publicity, promotional purposes or exhibition after clearance dates for general releases have been agreed upon by the client.
- If a rough sketch, by agreement between the originator and the client, is to be used as an original, the former shall be entitled to the full fee initially agreed for the complete job.

### Renewal of contract

- Where a work or project is commissioned on an annual contract basis, the contract shall be deemed to be automatically renewed unless three months prior notice is given in writing by either party of revised terms being required, or of the contract being terminated.

### Payment

- Accounts may be rendered on completion of the commission or at intermediate stages to be agreed with the client.
- Payment shall be due on rendering of account. This applies equally in the case of sketches and originals commissioned from the designer but not used.
- Payment for rough sketches or preliminary designs does not convey to the client the right of possession nor the right of reproduction.
- If a rough sketch, by agreement between the originator and the client, is to be used as an original, the former shall be entitled to the full fee initially agreed for the complete job.
- If the client's original instructions are subsequently varied or augmented, the originator shall be entitled to a pro rata fee for the additional work.
- Extended use of the originator's work or transfer in total of his/her reproduction rights shall entitle him/her to a higher fee.

### Royalties

- For certain assignments remuneration may be preferred on a royalty basis instead of on a fixed fee or fee-plus-hourly rates basis.

Payment on a royalty basis relates the originator's remuneration to the success of the design, while reducing the initial fee. This initial fee shall be estimated and agreed to cover the originator's costs, exclusive of all profits, and shall be deemed as an advance on royalties. The royalties may be calculated as a percentage of the production costs or on the wholesale or retail selling price of the published work, or on a unit basis as may be agreed.

Royalties are normally related to the anticipated production.

### Miscellaneous expenses

- The originator shall be entitled to claim expenses incurred with the client's prior agreement, for such items as travelling, hotel and out-of-pocket expenses, long distance telephone calls, typesetting costs and for copies of photo prints and photographs (except where the work consists mainly of a photographic treatment).

Where specialist services are employed by the originator, in agreement with the client, these shall be charged separately, at cost.



### Termination of project or appointment

- On the premature cancellation of any agreement between the originator and his client, the former shall be entitled to reasonable financial compensation for services rendered in relation to the time, effort and expense involved, and to any forward commitments into which the originator may have had to enter as a result of the original assignment.

### Development designs

- All the above conditions shall apply in all cases, irrespective of whether the originator was given a free or concise brief or had been asked to develop the client's originals, ideas or suggestions.

### Design registration

- Where the registration of a design such as a trademark or a pattern is desirable, and the reproduction rights have been assigned to the client, the originator shall assist in the application for registration. The costs shall be borne by the client.

**ico-D** International  
Council of Design

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