



brand design & marketing

Methods and terms of business

Tuch Design Limited (company registration number 2319426) "Tuch Design" has a transparent pricing system and all prices are based upon staff hourly rates. Although these rates may be higher than those of some of our competitors, our total project costs are often considerably lower than other agencies. This is due to the seniority and experience of our staff, which results in them being able to complete work more efficiently.

Tuch Design can submit an estimate upon receipt of a design brief, which will outline the anticipated cost and timescale involved.

Fees

We prepare a proposal of fees for all new clients which will indicate the design costs for initial stages of the work or until completion of the project. With existing clients and projects, work will be carried out at prevailing hourly rates. If requested by the client, an overall estimate of cost can be supplied. If we are asked to start work on a project by a client before a fee agreement is reached, then all work will be charged at prevailing hourly rates. Generally we charge for our work in a variety of ways according to the stage or type of work being carried out. The main method of charging are as follows:

Fixed fees

These are usually charged for the initial stages of a project. This gives the client a clear indication of his/her financial commitment up to the point of seeing a concept presentation. It is not usually possible to fix fees "hard and fast" beyond the concept stage, because the work involved thereafter will depend on the nature of the proposed solution.

Consultancy fees

For long term projects, such as corporate identity programmes, we may charge an annual consultancy fee, agreed in advance and invoiced monthly.

Hourly rates

These are usually charged for later stages of a project or for on-going projects, and are predominantly charged for graphic design, artwork and marketing consultancy.

Wherever an agreement is based on hourly rates, whether an estimate has been prepared or not, the charge will be made for actual hours worked at prevailing rates.

Details of current hourly rates are available upon request. We reserve the right to review hourly rates, subject to one month's notice.

If fixed or consultancy fees have not been agreed the hourly rate will apply.

Preliminary work

All work carried out, at the request of the client will be charged, whether experimental or otherwise,

Percentage of contract

In most cases, where a project includes interior design or retail design, the preparation of detailed drawings and contract supervision will be charged as a percentage of the contract price. The contract price is the total amount agreed in the final account(s) submitted by the contractor(s) for all works in which Tuch Design Limited has been involved. Any reductions in the final account due to penalty clauses etc, will not be taken into account when calculating our fees. The actual percentage charged will vary according to the size of the contract and will be agreed with the Client in advance.

Royalty

In some cases, where the design of a product or saleable item is involved, a royalty may be charged. This will be calculated as a percentage of total sales at wholesale prices.

Abortive work

Charges for abortive work apply either when an ongoing project is cancelled or when we are asked to work on a brief which is later changed by the client so that some or all of the work completed has to be replaced or repeated. This will be calculated by charging prevailing hourly rates for work to date or for the 'replacement' work carried out following the change of brief.

Bought-in cost:

There are a number of services which are required on a project that have to be bought in from outside suppliers. These include studio materials, photographic prints and specially commissioned services such as photography, illustration, litho, silk screen and digital printing. All bought in costs are recharged to the client at the cost to us (generally trade cost), plus a handling charge of 17.65%.

There are three exceptions to this:

- 1 Studio/admin materials, which are charged at 5% of fees.
- 2 Travel and subsistence, which are charged at cost.
- 3 Very large one-off purchases on which a lower percentage may be charged at our discretion, provided we have agreed this in advance with the client. When we buy materials, goods or services to use on a project, we act as the client's agent

and not as a principal and the client agrees that any claim that he/she or the company may have arising out of defects in my such materials, goods or services is against the supplier and not against us. Again, we are entitled to call on the client to pay the supplier direct if we so wish. We also reserve the right to subcontract work as we think fit, without notice.

In addition to fees, the Client shall reimburse us for out-of-pocket expenses actually and properly incurred in execution of the commission. Such expenses will include hotel and travel expenses, photocopies, colour prints, courier costs and all out-of-pocket expenses. The client will pay us in advance, immediately on demand, in respect of any Bought In Costs, which exceed £500 and/or which relate to sums payable by us to third parties with whom we have no credit arrangement.

Lithographic Printing Services

If requested by the Client, we will act as the Client's agent for the purchase of lithographic printing services ("litho printing"). We reserve the right to select a suitable provider of the litho printing services. As we act as the Client's agent in this regard, any contract formed in relation to the purchase of the litho printing will be between the Client and the relevant printer and we accept no responsibility for the performance or quality of the litho printing.

If we are not required to purchase litho printing as agent for the Client, we reserve the right to request up to fifty copies of each item sent for litho printing of our files.

Invoicing

On completion of a stage: This is our normal practice for invoicing fees and bought-in-costs. However, sometimes bought-in-costs are invoiced to us by our suppliers after our invoice has been sent to our client and these then have to be charged at a later date.

Within a stage: When a particular stage is very large or will last more than one month, we may invoice an appropriate part of the fee at the end of the month. This will normally be for the hours worked during the month.

Monthly: On some on-going projects, it is more appropriate to charge for our work on a monthly basis for hours worked. This method of invoicing is usually used for consultancy fees or retainers.

Payment of invoices

Normal terms: Payment will be due on demand and must be paid within 30 days from the date of our invoice unless earlier payment has been agreed. Any queries a client may have following the receipt of our invoice should be raised in writing within 14 working days of the date of the invoice.

If an invoice is not paid within one month, Tuch Design Limited may, without prejudice to any of its other rights, suspend its services to the client until the invoice is paid. In this event, the client will have no claims against us for non-performance or for any liability incurred by the client as a result of any delay caused by this suspension.

Interest will be charged at 4% above Bank of England base rate from the date of invoice until payment is received in cleared funds.

Payment in advance: If we start work on a new project for a new client and do not have time to check their credit rating (or cannot give them a credit rating) we may ask for payment, or part payment in advance.

Value Added Tax: VAT, if applicable, will be charged at the appropriate rate prevailing at the date of invoice.

Copyright

Unless we agree otherwise in writing, all property, copyright design right and other intellectual property rights in any conceptual or finished materials produced for the client remain with us, and, if necessary to vest these rights in us, the client hereby assigns to us all present and future copyright, design right and other rights in such work throughout the world for the full period of such rights and all extensions and renewals thereof. We nevertheless grant to the client, on completion of the project as originally contemplated and on full payment of our fees, a personal non-assignable license to use the products of our work for all purposes contemplated in the design brief.

The client, in producing material/information of any kind to us, warrants that he/she or the company is entitled to use that material. Where we invent a brand name, trading name or company name as part of the design brief, it shall be the client's responsibility to clear the name for all uses. The client agrees to indemnify us (as to damages and costs) in the event of a claim by anyone else arising out of our use of that material or arising out of the use of any of the invented names. This includes, but is not limited to claims arising out of alleged infringements of copyrights, design rights, patents and passing off, defamation, trade marks and confidential information.

We will retain full copyright on all internet construction including: HTML and VRML programming, images, video, sound, animation, JAVA, JAVA script, CGI, databasing material and all other related materials not issued directly by the

customer. Settlement for all of the aforementioned elements of an Internet site for transfer to another host, will be agreed by the agency before transfer.

Client responsibilities

The Client undertakes promptly to provide us with all information, assistance and materials that we may request from time to time to facilitate our proper and timely performance of the Services. The Client warrants that all information provided by it to us will be accurate, and that if it is entitled to provide the same to us for our use without recourse to any third party.

If as part of our Services, we invent any brand name, trade name, company name or domain name for the Client, the Client will be solely responsible for ensuring that the name(s) can be freely and lawfully used, without incurring any liabilities for passing off, defamation, breach of confidence and/or infringement of third party intellectual property rights.

Approvals

From time to time we may require the Client's approval of various matters, such as draft Proposals, media schedules, estimates and/or the product(s) of our Services. Any reference in this Agreement to the Client's organisation who are authorised to approve our work and whose names have been given to us for this purpose ("Authorised Person(s)"). The Client will notify us in writing of any change to the Authorised Persons.

"Approval" will (without limitation) be signified by:

- 1 Any fax, letter or purchase order from the Client bearing the signature of an Authorised Person;
- 2 Oral approval given by an Authorised Person or email emanating from the individual business email address of an Authorised Person;
- 3 The signature of an Authorised Person on our documentation (including without limitation on any Proposal or draft material submitted to the Client for Approval).

The Client will keep us indemnified against any costs, claims, proceedings or demands arising out of or in connection with any press releases, publications or other material prepared for the Client by us and Approved by the Client prior to publication or transmission.

The Client undertakes to notify us immediately if it considers that any statement made in any document submitted by us to the Client for Approval is incorrect or misleading in any way, or is likely to give rise to any claim or action against us, whether for defamation or otherwise.

General Terms

Time: Unless we agree otherwise, there is no fixed date for the completion of work by us and, in any event, time is not of the essence for the completion of work.

Additional work: In the course of a project, we are sometimes asked to do work which is not included in the original fee proposal. We normally attempt to ensure such requests are documented in minutes of meetings with the client or contact reports, which shall be deemed to be contractual documents in themselves. Such additional work, if not of sufficient magnitude to justify a separate fee proposal, will always be charged for at prevailing hourly rates, whether an estimate is agreed in advance or not.

Disputes: We very much hope that disputes will not arise. If a client has a claim he/she or the company must bring an action on the claim within one year of the date of the invoice to which the claim relates or else the claim is barred. The law of England and Wales applies to all our agreements and any disputes arising out of them.

Photographic copyright: Photographic copyright remains the property of the photographer and not of Tuch Design Limited or the end user. Should the client wish to use the commissioned photography for any other use than what it was originally commissioned, then a fee, payable directly to the photographer, may then be applicable. If the client feels that further use of the photography (other than that for which it was originally commissioned) may be made, then Tuch Design will endeavour to negotiate with the photographer in order to buy the copyright outright and before the commissioning of photography. This will be undertaken on the understanding that the client relays all information regarding usage to Tuch Design Limited and that Tuch Design Limited does not take any responsibility or liability for disputes between the client and the photographer on copyright issues.

Proofs: Proofs of all work will be submitted for client's approval and we shall incur no liability for any errors not corrected by the client in proofs supplied to him/her. Client's amendments and additional proofs required will be charged extra to the price estimated unless otherwise agreed.

Delivery

- 1 Delivery of work shall be accepted when tendered and there-upon (or, if earlier) notification that the work has been completed, the ownership shall pass and payment shall become due.
- 2 Should expedited delivery be agreed, an extra may be charged to cover any overtime or any additional costs involved.

- 3 Should work be suspended at the request of or delayed by any default of the client for a period of 30 days, we shall then be entitled to payment for work already carried out, and materials specially ordered and other additional costs including storage.

Standing material: Construction software and other materials licensed or owned by us and used in the production of web pages, new media presentations and all other literature and the like shall remain our property. Such items when supplied by the client shall remain the property of the client.

Customers' property: Except in the case of a client who is not contracting in the course of a business nor holding himself/herself out as doing so, client property and all property supplied to us by or on behalf of the client shall, while it is in our possession or in transit to or from the client, be deemed to be at the client's risk (unless otherwise agreed) and the client should insure accordingly.

Periodical publications on the internet: A contract for the design and publication of a periodical internet site may not be terminated by either party unless 13 weeks' notice is given in writing. In the case of periodical internet sites produced monthly or more frequently, 26 weeks written notice in writing is required. Notice may be given at any time but whenever possible should be given after completion of work on any one issue. Nevertheless we may terminate any such contract forthwith should any sum due to us from the client remain unpaid.

Materials supplied by the client

- 1 We may reject any photographs, disks or any other materials supplied or specified by the client which appear to us to be unsuitable. Additional costs incurred if materials are found to be unsuitable during production may be charged except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by us in ascertaining the unsuitability of the materials then that amount shall not be charged to the client.

- 2 Where materials are so supplied, we will take every care to secure the best results but responsibility will not be accepted for imperfect work caused by defects or unsuitability of materials supplied or specified.

- 3 Quantities of materials shall be adequate to cover normal spoilage.

Liability

We shall carry out the project with reasonable care and skill and the product of our work will be reasonably fit for the purposes indicated in the brief. All other conditions and warranties as to fitness for purpose, conformity with descriptions and standards of care and skill, expressed or implied by statute or otherwise, are hereby excluded. In no case will liability that we might incur, whether in contract or otherwise exceed the total income value of the work charged to the client (excluding VAT and any bought in materials, goods or services). In any event we will not be liable for any consequential loss (eg loss of profits). The client agrees that he/she shall not be entitled to set off any claim for damages against a claim by us for work done and goods supplied.

The client will indemnify and hold us harmless in respect of any loss, injury, damage expense or third party claim arising from our work on the project except and to the extent that it is solely attributable to our negligence.

The waiver or non-enforcement by us of any breach or non-observance of these conditions shall not prevent the subsequent enforcement of them in full and shall not be deemed a waiver of any subsequent breach.

Tuch Design Limited shall be under no liability if it is unable to carry out any provision of the contract for any reason and may, by written notice to the client, elect to terminate the contract whereupon Tuch Design shall issue an invoice for work done and materials used to date and remuneration which shall be immediately payable by the client.

Insolvency

If the client ceases to pay his/her debts in the ordinary course of business or cannot pay his/her debts as they become due or being a company is deemed to be unable to pay its debts or has a winding up petition issued against it or being a person commits an act of bankruptcy or has a bankrupt petition against him/her, Tuch Design Limited without prejudice to other remedies shall:

- 1 have the right not to proceed further with the contract or any other work for the customer and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the client, such charge to be an immediate debt due to it, and
- 2 in respect of all unpaid debts due from the client have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to dispose of such goods or property in such a manner and at such a price as it thinks fit and to apply the proceeds towards such debts.

These terms are the terms by which we do business. They are to be read with any letter from us setting out our proposals for the client and no variation or condition will be effective unless it is agreed by us in writing and signed by a Director of Tuch Design. In asking us to work for him/her, the client agrees to be bound by these terms.