

Terms and Conditions

These Terms and Conditions are attached to a Design Proposal (the "Proposal") presented by Blue Star Design, LLC ("Blue Star") with respect to design services that are to be provided to you and/or your company ("Client"). Except as provided in the Proposal, these Terms and Conditions will set forth the agreement between Blue Star and Client with respect to such design services (the Proposal and Terms and Conditions collectively referred to as the "Agreement").

1. SPECIFICATIONS. Any products and/or services to be supplied by Blue Star under the Proposal will provided in accordance with the specifications set forth in the Proposal. Any dates or schedules specified in the Proposal for the delivery of any products or services by Blue Star are only estimates and shall not be binding upon Blue Star. Blue Star shall not incur any liability, either directly or indirectly, nor shall any engagement be canceled as a result of any delays in meeting such dates or schedules.

2. PRICING; PAYMENT. The products and/or services set forth in the Proposal will be provided by Blue Star to Customer at the prices in the Proposal. Any products or services provided by Blue Star not listed in the Proposal shall be billed at Blue Star's customary charges or rates. Further, expedited or rush service by Blue Star will be subject to additional charges as established by Blue Star from time to time. All prices will be exclusive of expenses incurred by Blue Star in providing the products and/or services under the Proposal. Customer shall be responsible for all out-of-pocket expenses incurred by Blue Star in providing the products and/or services, including, but not limited to, copy charges, travel costs, model and other talent fees, equipment use and rental fees, disk charges, shipping charges and other related costs and expenses. Invoices are due upon Customer's receipt thereof. Customer shall pay interest of one and one-half percent (1½%) per month on all amounts due but not paid within thirty (30) days of the invoice date. Blue Star retains the right to cease all work and deliverables for Customer under the Proposal until overdue amounts are paid.

3. TAXES. Customer is solely responsible for payment of any taxes (including sales or use taxes, excise taxes, intangible and property taxes and similar taxes) resulting from products and services provided under the Proposal, excluding, however, any taxes payable by Blue Star due to income earned by it or withholding taxes to its employees.

4. DESIGN REVIEW. With respect to any design work performed by Blue Star under the Proposal, Blue Star will present Customer an initial concept design. Upon presentment of this concept design, Customer will have the opportunity to work with Blue Star in its redesign. The prices set forth in the Proposal are based upon a maximum of two (2) requests for changes to the initial concept design. Any changes to the initial concept design requested by Customer in excess of such amount or any changes requested after acceptance of the concept design will be billed by Blue Star at its customary rates for such services.

5. REVIEW OF DELIVERABLES. Upon the completion of any deliverable in the Proposal, Customer will have three (3) business days to review or test the deliverable and notify Blue Star of any problems with such deliverable. If Customer does not timely notify Blue Star in writing of any problem, such deliverable will be deemed to be accepted by Customer. In the event of any delay caused by Customer's failure to timely make any delivery set forth in the Proposal or respond to Blue Star in a timely manner, Blue Star will not be responsible to meet any due dates set forth in the Proposal, which shall be extended in Blue Star's discretion.

6. CHANGES. In the event Customer requests any changes or modifications to the products or services provided under the Proposal, Customer will be responsible for all charges reasonably incurred by Blue Star with respect to such changes. Further, any times scheduled in the Proposal for the delivery may be extended by Blue Star upon any such requested changes or modifications.

7. CUSTOMER'S REPRESENTATIONS. Customer represents and warrants to Blue Star that:

a. No content or information or materials delivered by Customer to Blue Star will: (i) be libelous, defamatory, obscene, profane, threatening, harassing or offensive or otherwise violate the privacy or publicity rights of any third party; (ii) constitute a fraud or other unlawful business practice, (iii) infringe on any copyright, patent, trade secret or other proprietary right held by any third party, or (iv) violate any federal, state or local law, regulation or orders.

b. Customer has secured all necessary licenses and clearances for use of the content, including all rights to copy, distribute, modify, perform and display the content and to create derivative works of the content. Unless otherwise agreed by Blue Star in the Proposal, all content will be supplied by Customer.

c. Blue Star may refrain from starting any work under the Proposal until such time as Customer has delivered to Blue Star all required content, including, but not limited to, copy, image files, logos and reference materials. Any delays in providing such content by Customer will extend the time period for the delivery. Blue Star has no obligation to review any content, information or other materials supplied by Customer and does not assume any liability therefor.

d. Blue Star shall not be responsible for any delays or inability of third parties used by Blue Star to provide the products and/or services under the Proposal. Any price estimates in the Proposal may be based on a quote from a third party. Blue Star shall not be bound by any price quote in the Proposal if any such third party fails to provide the products or services as agreed.

8. NON-INFRINGEMENT. Blue Star represents and warrants to Customer that the graphics, scripts, text, source code, software and other materials supplied or prepared by Blue Star under the Proposal will not infringe on any trademark, copyright, patent or other proprietary right held by any third party.

9. TERMINATION. Blue Star shall have the right to terminate the agreement under the Proposal and all work to be performed thereunder (i) in the event of Customer's breach of any provision hereof, or (ii) in the event a petition seeking composition of creditors, the protection afforded by the United States Bankruptcy Code or benefit of other laws affecting the rights of creditors generally is filed by or

against Customer. Upon termination by Blue Star, any and all work to be performed by Blue Star under the Proposal shall immediately terminate; whereupon Blue Star will have no responsibility to refund any payments made to it prior to such date of termination.

10. CANCELLATION. In the event Customer cancels the engagement contemplated under the Proposal or fails to deliver any items set forth in the Proposal or these Terms and Conditions after written request by Blue Star, Customer shall pay to Blue Star all charges and fees incurred by Blue Star through the date of termination. In addition, without limiting the availability of any and all other legal or equitable remedies, Customer shall pay a cancellation fee, depending upon the date of cancellation, equal to the following schedule: (a) cancellation during Milestone 1 (or equivalent period) – 50% of total estimated fees; (b) cancellation during Milestone 2 (or equivalent period) – 75% of total estimated fees; and (c) cancellation during Milestone 3 (or equivalent period) – 100% of total estimated fees.

11. OWNERSHIP. Any content or materials supplied by Customer shall remain the property of Customer. Any image, graphics, coding, scripts, text, source code, software or other materials supplied or prepared by Blue Star, and any derivative works therefrom, shall remain the property of Blue Star; provided Blue Star shall grant to Customer the limited right to use such materials, on a non-transferable basis, on its web site or as otherwise contemplated in the Proposal. Notwithstanding any other provision of the Proposal or these Terms and Conditions, Customer shall not be permitted to modify, reverse engineer, disassemble or decompile any software or source code supplied by Blue Star for any web site developed by Blue Star.

12. RIGHT TO DISPLAY. Notwithstanding any other provision hereof, Blue Star will have the right to publicly display any web site, including any components or content therein, and any design prepared or developed by Blue Star under the Proposal to any third party, including, but not limited to, to potential clients in person, by advertisements or trade shows, or through contest submissions.

13. INDEMNIFICATION. Customer shall indemnify and hold Blue Star, and its directors, officers, employees and agents, harmless from and against any claims, losses, damages, liabilities, costs or expenses of any nature (including reasonable attorney's fees) suffered or incurred by any of them to the extent that such are caused by (i) a breach of the Proposal or these Terms and Conditions by Customer, or (ii) any content or materials supplied by Customer.

14. LIMITATION OF LIABILITIES. BLUE STAR SHALL NOT BE LIABLE TO CUSTOMER FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, WHETHER ARISING OUT OF BLUE STAR'S BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OR OTHERWISE (EVEN IF BLUE STAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE). CUSTOMER'S SOLE REMEDY UNDER THE AGREEMENT FOR A BREACH BY BLUE STAR SHALL BE THE PERFORMANCE OF THE SAME OR REPLACEMENT SERVICES AND/OR THE DELIVERY OF REPLACEMENT PRODUCTS BY BLUE STAR.

15. DISCLAIMER OF WARRANTIES. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED HEREIN, THE PRODUCTS AND SERVICES PROVIDED BY BLUE STAR ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. BLUE STAR EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES WITH RESPECT THERETO, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW, CUSTOM, USAGE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

16. GOVERNING LAW; VENUE. This Agreement shall be governed by the laws of the State of Ohio, without reference to any conflict of laws principles, and all claims, actions and other proceedings relating to the subject matter hereof shall be brought and heard exclusively in the courts of Summit County, Ohio. Customer hereby consents to jurisdiction and venue of such courts and waives any right to object to such jurisdiction or venue.

17. ATTORNEY FEES. If Blue Star is required to resort to legal action for the redress of a breach hereof by Customer, Blue Star, if successful, shall be entitled to an award of all of its reasonable attorney fees and costs.

18. ASSIGNMENT. This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns. Customer may not assign this Agreement or any of its rights or duties hereunder (including the sale or transfer of majority control of the ownership of Customer) without the prior written consent of Blue Star. Nothing in the Proposal or these Terms and Conditions shall be construed as creating any act or beneficial right in or on behalf of any third party.

19. FORCE MAJEURE. To the extent Blue Star is prevented from performing any of its obligations hereunder due to circumstances beyond its control (including, but not limited to, the action or inaction of any governmental, civil or military authority; a strike, lockout or other labor dispute; or a fire, flood, war, riot, theft, earthquake or other natural disaster, acts of terrorism or other civil disturbance), Blue Star shall not be liable to Customer for any losses or damages arising out of such non-performance.

20. CONFIDENTIALITY. Customer shall treat all confidential and proprietary information and materials of Blue Star strictly confidential and shall not disclose such information or materials to any third party.

21. MISCELLANEOUS. No provision hereof shall be deemed waived, amended or modified by either party, unless it is in writing and signed by the party against whom it is sought to be enforced. The failure of a party to enforce any provision hereof shall in no way be construed to be a waiver of such provision, nor in any way affect the ability of a party to enforce the same or other provisions thereafter. The Proposal and these Terms and Conditions represent the complete agreement of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements, written or oral, between the parties. Blue Star shall be deemed an independent contractor of Customer and neither party shall be, nor hold itself out as being, an employee or agent of the other party. Any notice to be given hereunder shall be given in writing and delivered personally, by overnight courier, by U.S. certified mail, postage prepaid, written receipt requested, or by facsimile with confirmation.