

# James Barr Design

## James Barr Design Limited - TERMS OF BUSINESS

These Terms of Business shall govern every order and shall form part of the contract between ourselves ('we' being James Barr Design Ltd and 'you' the client) unless otherwise agreed in writing prior to acceptance of the order.

Each Works Order shall be placed in writing. We shall not be obliged to accept oral orders and in the event that we do accept oral Works Orders, we shall not be liable in respect of the accuracy of the Works Order.

We shall either charge you an amount equal to the number of hours we spend on 'the Works' at our hourly rates plus expenses ("the Fee") or an agreed stage cost based on specific deliverables.

Any work that you ask us to do which is not detailed in the Works Order Form ("Additional Works") shall be charged in accordance with our Terms. Additional Works shall include (but shall not be limited to) extra work or expense caused either by delay in your giving us instructions or variations in or work in addition to that comprised in the Works.

We request 100% of agreed stage fee to be paid before commencement of work, this is due to the bespoke nature of the work. You agree to pay us within 14 days of receipt of a valid and correctly prepared invoice unless we agree otherwise.

You shall inspect the Works regularly and shall inform us immediately if you are rejecting the Works due to the following reasons:

- The Works do not comply with the Works Order;
- The Works are defective in material and workmanship;

Expenses covering materials purchased specifically for use on the clients' project are charged at cost, plus 20% handling fee. This does not include general studio and workshop materials or telephone calls. For any major purchases the client will be advised in advance. All expenses incurred for travel (air fare, train tickets etc) including overnight accommodation shall be charged to the client at cost. Mileage will be charged at £0.45/mile.

Copyrights, patents, and design registration are the clients' responsibility and this should include a check for infringements of existing third party designs.

Outside suppliers contacted on behalf of a client for information on materials, components, or for costing purposes, will not be informed of the clients' identity unless this has been agreed beforehand.

Where James Barr Design Limited specifies or suggests a supplier, this is done to assist the client and should not be seen as a guarantee of the quality of that suppliers' work.

Although timings for stages are suggested, these are the lead times expected for executing the work. Periods of time required by the client for decisions, referrals of designs for approval by higher authority etc, should be considered over and above these timings.

We keep time sheets showing individual staff time spent, plus all sketches and drawings produced, for a period of three months. After this, only core details of the work are kept.

We retain master copies of engineering drawings and update any agreed changes to ensure continuity, but we recommend that at an appropriate point clients take over the masters and responsibility for their maintenance.

Whilst we take every precaution to ensure that the final design specifications are accurate and correct, the final legal and financial responsibility for the approval of the design, checking of the drawings, commissioning of tooling and the implementation of its production, rest solely with the client.

Every effort is made to ensure that designs produced meet the required standard of performance. However, it is the clients' responsibility to satisfy him/herself that the product is satisfactory in every way including safety, and in the event of claims or litigation the responsibility will rest with the client.

All Intellectual Property Rights of whatever nature in material designed or devised by us will rest in and belong to us unless otherwise assigned in writing. Intellectual property rights embodied in the work, which is carried out on behalf of our clients, remain the property of James Barr Design Limited until all invoices have been paid in full, whereupon they are assigned to the client in respect of the design solution chosen. Intellectual property rights for other designs generated during the work but not yet chosen for further development remains the property of James Barr Design Limited until formally assigned to the client.

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We photograph the work for our own records, and will share these costs if the client also requires photographs. We also use renderings or photographs of the product(s) which we design in our introductory presentations to potential clients, with the permission of the original client and subject to mutually agreed conditions, such as non-disclosure of the identity of the original client.

If at any stage you decide not to proceed further with the completion of this contract you shall in any event be liable to pay us a cancellation fee equal to 50% of any commissioned stage of work together with all costs due to date under this agreement.

Where we work on projects which deal with uncertainties (for example research and development of a design solution), we employ a logical 'design-test-evaluate' methodology. There is an acknowledged risk by all parties that despite our best endeavours and following best practices, a final solution may not be achievable. This is an intrinsic risk when tackling 'uncertainties'.

Our liability for any loss or damage consequential or otherwise and howsoever caused whether in tort or contract or otherwise shall not exceed the outstanding amount invoiced by us to you in respect of the agreement.

Any materials, product or prototype samples we receive for reference, testing or evaluation are held by us without responsibility for damage or loss. Such material will be held for a period of 3 months and if not requested to be returned shall be disposed of. Any expenses incurred for disposal or return of material shall be at your cost.

You shall indemnify us and keep indemnified from and against all and any loss, damage, liability and legal fees and costs incurred by us arising from any act, neglect or default of your directors, employees, agents or otherwise in connection with the Works.

We shall not be held responsible for any injury sustained by any persons using any prototype or product produced in relation to the Works either in the manner it was intended or by its misuse.

If, on your instructions, this Agreement (or any other document relating thereto) is signed by or an invoice is submitted to any person, firm or company who is expressly held out as your agent, then you shall be treated for all purposes as the contracting party.

If either of us is affected by any circumstances beyond our reasonable control, that party shall forthwith notify the other of the nature and extent thereof. Neither of us shall be liable to the other for delay in performance, or non - performance of any of its obligations under this Agreement when due to any Force Majeure of which that party has notified the other and the time for performance of that obligation shall be extended accordingly.

This Agreement will be operational upon a Works by Works basis. Nothing in these Terms of Business shall imply any continuous relationship between the parties. A regular 'retained' provision of service can be agreed and shall be considered as a temporary contract with a rolling end date of 3 months from instruction to conclude the agreement (as a notice period) by either party.

This Agreement constitutes the whole and only agreement between us and supersedes and extinguishes any other agreement whether written or oral.

If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect that shall not affect the legality or validity or enforceability of any other provision of this agreement.

No forbearance, delay or indulgence by either of us in enforcing the provisions of this agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of this agreement.

This Agreement shall be governed by and construed in accordance with English law and the parties submit to the non exclusive Jurisdiction of the English Courts.

James Barr Design Limited has a registered trading address:  
C/O Sterling House, 27 Hatchlands Road, Redhill, Surrey, RH1 6RW

Postal address for general correspondence:  
James Barr Design Ltd, 33 Spencer Way, Redhill, Surrey, RH1 5LF