

# Standard Terms and Conditions

(KDD, Inc. - Updated May, 2006)

Estimates (Quotations) are valid for 30 days from the date of receipt.

1. **GENERAL TERMS.** Unless otherwise agreed upon, Kapushion Design and Development, Inc. (KDD) works on a Time and Materials basis. KDD will bill at a rate known to the Client. All work performed by KDD in good faith is to be compensated by the Client at the known rate. During the term of this Agreement, KDD will perform the services as outlined in the Estimate. Scope of Work is based on specifications and information known at the time of writing the Estimate.
2. **FEES AND EXPENSES.** All fees and expenses listed in the Estimate are estimated values for the work described. Any additions, revisions, or gross misinterpretations to the tasks or requirements defined in the Estimate will change the costs of the agreement. Expenses for supplies (materials, mockups, digital media, etc.) needed to complete the project will be paid by the Client unless otherwise specified. Costs for assistance from vendors not employed by KDD and/or not included in the Estimate will be prior approved and paid by the Client. Regular travel (less than 40 miles one way) between Client offices or vendor offices and KDD will not be billed to the client. Expenses for out-of-town travel such as transportation and lodging will be paid by the Client unless otherwise agreed upon. Expenses for travel are not included in the Estimate unless otherwise noted.
3. **PAYMENT.** An invoice will be sent to the Client on a monthly basis and/or after the completion of each phase, or project, or other agreed time. All invoices are due and payable within 30 days of receipt unless otherwise noted. All past due accounts may accrue interest at the rate of 1.5% per month. A startup payment may be required prior to initiating work on the project.
4. **CHANGES AND MODIFICATIONS.** If the Client or Client Representative requests that a change or addition be made to the Scope of Work as described in this Agreement, or if changes to the design direction require additional work hours, the Client shall pay additional fees and/or expenses charged by KDD for such changes or additions. KDD will notify Client of additional work resulting in additional charges.
5. **DISCLOSURES.** All information made available to KDD during the term of this agreement that is proprietary to the Client or produced by KDD pursuant to this agreement shall be considered to be proprietary information of the Client, and shall not be used for other purposes except under this agreement without the Client's prior written permission. This does not pertain to information which is not specific to the Client's products or business interests. It also does not include processes or methods developed by KDD to carry out services. The Client agrees to not disclose or use any information or processes that are proprietary to KDD without prior written permission.
6. **RELATIONSHIP.** KDD is an independent contract service and/or consultancy to the Client. This agreement shall not be deemed to create a partnership, joint enterprise, or employment between the parties. KDD shall be responsible for all taxes, insurance, etc. and agrees to indemnify and hold the Client harmless for any claims from any taxing authority resulting from performance of KDD, in performance of this agreement. The Client agrees to indemnify and hold KDD harmless from any and all liability for the Client's application or ultimate use of any design, service, product, system or data provided by KDD for the Client.
7. **AUTHORIZATION FOR PRODUCTION, BUILD, OR PRINTING.** The Client is responsible for checking the design, engineering, data, and typography – including fit, dimensions, accuracy, and text – in final documentation. Documentation or artwork released for parts fabrication, tooling production, or printing at the Client's verbal or written request with or without a signature will be the sole responsibility of the Client. KDD cannot guarantee that a solution, a design, or other work will fully satisfy the objectives of the project. In any case, the Client agrees to indemnify and hold KDD harmless for any damages or claims resulting from errors, omissions or flaws in design or documentation.
8. **ORDERS TO PROCEED.** The Client's submission of a Purchase Order, verbal order, or other order requesting KDD to proceed with work on a project as described in the Agreement and/or work not specifically described in the Agreement shall constitute the Client's acceptance of the terms and conditions.
9. **CANCELLATION.** This agreement may be terminated by either party with 2 weeks written notice, though it may be immediately terminated for breach or fraud by either party. In the event that the project is terminated by either party, all resulting materials and data produced or obtained by KDD shall be released to and become the property of the Client only upon complete payment to KDD for work performed to the date KDD ceases work on the project.
10. **RELEASES.** Materials and data produced or obtained by KDD for the Client will not be legally owned by or granted to the Client until full payment has been received even if such materials and data are made available to the Client or other parties to aid timeline progress. Upon full payment to KDD, KDD agrees that the Client shall have sole ownership and title to all rights and legal interest in: 1) All data, drawings, designs, analyses, reports, products, and physical property created custom for this project, and : 2) All inventions, discoveries, and improvements which are conceived or reduced to practice during the term of this agreement unless otherwise noted.
11. **DISPUTES.** In the event that either party brings suit to enforce any provisions of this agreement, the prevailing party shall be entitled, in addition to any awards damages, reasonable attorney's fees, deposition expenses and other court costs in connection with the suit. Any award or judgment entered in favor of KDD shall draw 18% interest per annum compounded annually.
12. **LIABILITY AND FORCE MAJEURE.** In no instance will the liability of KDD exceed the total of fees-for-service paid to KDD by the Client during the term of the agreement for direct or indirect damages. In the event that work cannot be performed due to war, acts of GOD, weather or other uncontrollable event, KDD will be excused from performing the duties of the agreement without penalty.

This agreement may not be changed except in writing and signed by both parties. The validity, performance, construction and effect of this agreement shall be governed by the laws of the state of Colorado.

END of Terms and Conditions.