

Terms and Conditions

Last updated: 5/19/22

Please read these Terms and Conditions carefully before using the aspengarlitzgraphicdesign.com website operated by Aspen Garlitz Graphic Design Your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who access or use the Service. By accessing or using the Service you agree to be bound by these Terms. If you disagree with any part of the terms then you may not access the Service.

1. Fees and Charges

a) Fees. In consideration of the services to be performed by Aspen Garlitz, the client shall pay agreed fees in the amounts and according to the payment schedule set forth in the project order, and all applicable sales, use, or value added taxes, even if calculated or assessed subsequent to the payment schedule

b) Expenses. Clients shall pay Aspen Garlitz's expenses incurred in connection with this agreement as follows: (a) incidental and out-of-pocket expenses including but not limited to costs for telephone calls, postage, shipping, overnight courier, service bureaus, typesetting, presentation materials, photocopies, computer expenses, parking fees and tolls, and taxis at cost. If applicable, a mileage reimbursement at \$0.57 per mile and travel expenses including transportation, meals, and lodging, incurred by Aspen Garlitz with client's prior approval.

c) Invoices. All invoices are payable within 30 days of receipt. A monthly service charge 1.5% is payable on all overdue balances. A discount of 2% is granted if the invoice is paid within 10 days. Client shall be responsible for all collection or legal fees necessitated by lateness or default in payment. Aspen Garlitz reserves the right to withhold delivery and any transfer of ownership of any current work if accounts are not current or overdue invoices are not paid in full. All grants of any license to use or transfer of ownership of any intellectual property rights under this agreement are conditioned upon receipt of payment in full which shall be inclusive of any and all outstanding additional costs, taxes, expenses and fees, charges, or the cost of changes.

2. Changes

a) General Changes. Unless otherwise provided in the proposal, and except as otherwise provided for herein, Client shall pay additional charges for changes requested by client which are outside the scope of the services on a time and material basis. Such charges shall be in addition to all other amounts payable under the project proposal, despite the maximum budget, contract price or final price identified therein.

b) Timing. Aspen Garlitz will prioritize performance of the services as may be necessary or as identified in the proposal, and will undertake commercially reasonable efforts to perform the services within the time(s) identified in the proposal. Client agrees to review the completed project in a reasonable amount of time for such reviews and to either a) approve the finished project in writing or b) provide written comments and/or corrections sufficient to identify the Client's concerns, objections, or corrections to Aspen Garlitz. Aspen Garlitz shall be entitled to request written clarification of any concern, objection or correction. Client acknowledges and agrees that Aspen Garlitz's ability to meet any and all schedules is entirely dependent upon Client's prompt performance of their obligations to provide materials and written approvals and/or instructions pursuant to the proposal and that any delays in Client's performance or changes in the service requested by Client may delay delivery of the finished project. Any such delay caused by the client shall not constitute a breach of any term, condition, or Aspen Garlitz's obligations under this agreement

c) Testing and Acceptance. Designer will exercise commercially reasonable efforts to test finished projects that require testing and to make all necessary corrections prior to providing the project to the Client. Client, within a week of receipt of each finished project, shall notify Aspen Garlitz, in writing, of any failure of such project to comply with the specifications set forth in the proposal, or of any other objections, corrections, changes or amendments that Client wishes made to such finished project. Any such written notice shall be sufficient to identify with clarity any changes, and Aspen Garlitz will undertake to make the same in a commercially timely manner. Any and all objections, corrections, changes, or amendments shall be subject to the terms and conditions of this agreement. In the absence of such notice from the client, the finished project will be deemed accepted.

3. Client Responsibilities

Client acknowledges that they shall be responsible for performing the following in a reasonable and timely manner:

- a) coordination of any decision-making with parties other than Aspen Garlitz.
- b) provision of Client content in a form suitable for reproduction or incorporation into the finished projects without further preparation, unless otherwise expressly provided in the proposal.
- c) final proofreading and in the event that a Client has approved the finished product, errors such as but not limited to typographic errors or misspellings, remain in the final product. Client shall incur the cost of correcting such errors.
- d) ensuring that all information and claims comprising Client content are accurate, legal, and conform to applicable standards in Client's industry.
- e) Aspen Garlitz does not approve of the usage of content that does not belong to the Client or the Client did not get permission to use. Aspen Garlitz will ask if the Client has permission to use the materials, and will proceed with the project when the Client confirms. Aspen Garlitz denies accountability for copyright infringement. (More info at section 7.a)

4. Accreditation

a) All displays or publications of the finished product shall bear accreditation and/or copyright notice in Aspen Garlitz's name in the form, size, and location as incorporated by Aspen Garlitz and the finished product, or as otherwise directed by Aspen Garlitz. Aspen Garlitz retains the right to reproduce, publish, and display the finished product in Aspen Garlitz's portfolios, websites, galleries, design periodicals, and other media or exhibits if it is agreed upon with the client. Aspen Garlitz has the right to be credited with authorship of the finished project in connection with such uses. Either party, subject to the other's reasonable approval, may describe its role in relation to the project and if applicable, the services provided to the other party on its website and in other promotional materials, and, if not expressly objected to, include a link to the other party's website.

b) Aspen Garlitz will never resell the Client's work. Aspen Garlitz acknowledges that it has been exclusively sold to that Client.

c) Aspen Garlitz remembers that as a person, they respect the other party's wishes to keep certain projects private. If requested, Aspen Garlitz will abide by the Client's wish. If the Client's work is displayed on the website, the Client's work will be on display for others to see and will most likely provide free promotion.

You are eligible for a 10% discount on the final product total.

5. Confidential Information

Each Party acknowledges that in connection with this agreement it may receive certain confidential or proprietary technical and business information and materials of the other party. Each party, its agents, and employees shall hold and maintain in strict confidence all confidential information, shall not disclose that information to third parties, and shall not use the confidential information except as may be necessary to perform its obligations under the proposal except as may be required by a court or governmental authority. Notwithstanding the foregoing, confidential information shall not include any information that is in the public domain or becomes publicly known through no fault of the receiving party, or is otherwise properly received from a third party without an obligation of confidentiality.

6. Relationship of the Parties

a) Independent Contractor. Aspen Garlitz is an independent contractor, not an employee of the Client or any company affiliated with the Client. Aspen Garlitz shall provide the services under the general direction of the Client, but Aspen Garlitz shall determine, in Aspen Garlitz's sole discretion, the manner and means by which the services are accomplished. This agreement does not create a partnership or joint venture and neither party is authorized to act as agent or bind the other party except as expressly stated in this agreement. All rights granted to the Client are contractual in nature and are wholly defined by the express written agreement of the parties and the various terms and conditions of this agreement.

b) Designer Agents. Aspen Garlitz shall be permitted to engage and/or use third party designers or other service providers as independent contractors in connections with the services. Notwithstanding, Aspen Garlitz shall remain fully responsible for such Design Agents' compliance with the various terms and conditions of this agreement.

c) No Exclusivity. The parties expressly acknowledge that this agreement does not create an exclusive relationship between the parties. The Client is free to engage others to perform services of the same or similar nature to those provided by Aspen Garlitz, and Aspen Garlitz shall be entitled to offer and provide design services to others, solicit other clients and otherwise advertise the services offered by Aspen Garlitz

7. Warranties and Representation

a) By Client. Client represents, warrants, and covenants to Aspen Garlitz that the Client owns all right, title, and interest in, or otherwise has full right and authority to permit the use of the Client content. To the best of Client's knowledge, the Client content is accurate, legal, conforms to ethical standards of the Client's industry, does not infringe on the rights of any third party, and use of the Client Content, as well as any trademarks in connection with the project does not and will not violate the rights of any third parties. Client shall comply with the terms and conditions of any licensing agreements which govern the use of third party materials. Client shall comply with all laws and regulations as they relate to the services and finished project.

b) By Designer. Aspen Garlitz hereby represents, warrants, and covenants to the Client that Aspen Garlitz will provide the services identified in the agreement in a professional and workmanlike manner and in accordance with all reasonable professional standards for such services. Aspen Garlitz further represents, warrants, and covenants to the Client that

i) except for third party materials and client content, the final project shall be the original work of Aspen Garlitz and/or its independent contractors.ii) in the event that the final project include the work of independent contractors commissioned for the project by Aspen Garlitz, Aspen Garlitz shall have secure agreements from such contractors granting all all necessary rights, titles, and interest in and to the final project sufficient for Aspen Garlitz to grant the intellectual property rights provided in this agreement.

iii) to the best of Aspen Garlitz's knowledge, the final works provided by Aspen Garlitz and subcontractors does not infringe the rights of any party, and use of the same in connection with the project will not violate the rights of any third parties. In the event that the Client or third parties modify or otherwise use the finished project outside of the scope or for any purpose not identified in the proposal or this agreement or contrary to the terms and conditions noted herein, all representations and warranties of Aspen Garlitz shall be void.

c) Except for the express representations and warranties stated in this agreement, Aspen Garlitz makes no warranties whatsoever. Aspen Garlitz explicitly disclaims any other warranties of any kind, either express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose or compliance with laws or government rules or regulations applicable to the project.

8. Indemnification/Liability

a) By Client. Client agrees to indemnify, save and hold harmless Designer from any and all damages, liabilities, costs, losses or expenses arising out of any claim, demand, or action by a third party arising out of any breach of Client's responsibilities or obligations, representations, or warranties under this agreement.

b) By Designer. Subject to the terms, conditions, express representations and warranties provided in this agreement, Aspen Garlitz agrees to indemnify, save, and hold the harmless Client from any and all damages, liabilities, costs, losses, or expenses arising out of any finding of fact which is inconsistent with Aspen Garlitz's representations and warranties made herein, except in the even any such claims, damages, liabilities, costs, losses or expenses arise directly as a result of gross negligence or misconduct.

c) Settlement Approval. The indemnifying party may not enter into any settlement agreement without the indemnified party's written consent

d) Limitation of Liability. The service and the work product of Aspen Garlitz are sold "as is." In all circumstances, the maximum liability of Aspen Garlitz and affiliates, to the Client for damages for any and all causes whatsoever, and the Client's maximum remedy, regardless of the form of action, whether in contract, tort or otherwise, shall be limited to the designer.

In no event shall Aspen Garlitz be liable for any lost data or content, lost profits, business interruption, or for any indirect, incidental, special, consequential, exemplary, or punitive damages arising out of or relating to the materials or the services provided by Aspen Garlitz.

9. Term and Termination

- a) Term. This agreement shall commence upon the effective date and shall remain effective until the services are completed and delivered
- b) Termination. This agreement may be terminated at any given reason at any time by either party effective immediately upon notice, or the mutual agreement of the parties, or for cause if any party
 - i) becomes insolvent, files for bankruptcy, makes an assignment for the benefits of its creditors
 - ii) breaches any of its material responsibilities or obligations under this agreement.
- c) In the event of termination, Aspen Garlitz shall be compensated for the services performed through the date of termination in the amount of
 - i) any advance payment
 - ii) a prorated portion of the fees due
 - iii) hourly fees for work performed by Aspen Garlitz as of the date of termination

The Client shall pay all expenses, fees, and any additional costs incurred through and up to the date of cancellation.

- d) Upon expiration or termination of this agreement, each party shall return or destroy the confidential information of the other party. All rights and obligations of each party under this agreement, exclusive of the services, shall survive.

10. General

- a) Modification/Waiver. This agreement may be modified by the parties. Any modification of this agreement must be in writing, except for invoices, which can be done electronically.
- b) Force Majeure. Aspen Garlitz shall not be deemed in breach of this agreement if designer is unable to complete the service or any portion of the project by reason of fire, earthquake, flood, hurricane, labor dispute, act of war, terrorism, riot, civil disturbance, death, illness, governmental order, or regulation or any other event beyond Aspen Garlitz's control. Upon an event of this nature, Aspen Garlitz, will give notice to the Client of their inability to perform or delay the completion in the services and shall propose revisions to the schedule for completion.
- c) Governing Law and Dispute Resolution. The formation, construction, performance, and enforcement of this agreement shall be in accordance with the laws of the United States and the state of Idaho without regard to its conflict of law provisions of any other jurisdiction. In the event of a dispute arising out of this agreement, the parties agree to attempt to resolve any dispute by negotiation between the parties. If they are unable to resolve the dispute, either party may commence mediation and/or binding arbitration through the American Arbitration Association, or other forum mutually agreed by the parties. the prevailing party in any dispute resolved by binding arbitration or litigation shall be entitled to recover its attorneys' fees and costs. In all other circumstances, the parties, specifically consent to the local, state, and federal courts located in the state of Idaho. Client acknowledges that Aspen Garlitz will have no adequate remedy at law in the event the Client uses the finish project in any way not permitted hereunder, and hereby agrees that Aspen Garlitz shall be entitled to equitable relief by way of temporary and permanent injunction, and such other and further relief at law or equity as any arbitrator or court of competent jurisdiction may deem just and proper, in addition to any and all other remedies provided for herein
- d) Severability. Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this agreement is held invalid or unenforceable, the remainder of this agreement shall nevertheless remain in full force and effect and the invalid or unenforceable provision shall be replaced by a valid or enforceable provision. We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material we will try to provide at least 30 (change this) days' notice prior to any new terms taking effect. What constitutes a material change will be determined at our sole discretion.

e) Our Service may contain links to third-party web sites or services that are not owned or controlled by Aspen Garlitz Graphic Design. This business has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party web sites or services. The Client further acknowledges and agrees that Aspen Garlitz Graphic Design shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such web sites or services.

If you have any questions about these Terms, please contact me via email. You can also download this agreement to keep for your records.

The logo for Aspen Garlitz is written in a black, elegant cursive script. The word "Aspen" is on the top line and "Garlitz" is on the bottom line. The letters are interconnected with fluid, sweeping lines, particularly the 'A' and 'G' which have large, decorative flourishes. The overall style is classic and artistic.