# tyrus clutter

TRCDesign
design@tyrusclutter.com
www.tyrusclutter.com

DATE_____  TO:_____

COMMISSIONED BY_____  _____

PURCHASE ORDER NUMBER_____  _____

JOB NUMBER_____  _____

## DESCRIPTION OF PROJECT ASSIGNMENT

primary use_____

additional uses_____

number of individual screen pages_____

pixel length per screen (maximum preferred/minimum)_____

description of materials to be supplied by client_____

_____

date due_____

## RIGHTS TRANSFERRED

The materials on the disk (CD) can be used only for the purposes stated below. All other use(s) and modification(s) is (are) prohibited. The material on the disk may not be copied without the Designer/Developer's permission and must be returned after use. Any transfer of rights is conditional upon receipt of full payment.

## PRODUCTION SCHEDULE

| Milestone | Due Date | Payment Upon Acceptance |
|---|---|---|
| Contract Signing | _____ | $_____ |
| Delivery of Website Design | _____ | $_____ |
| Delivery of Beta Version of Site | _____ | $_____ |
| Delivery of Final Version *(includes return of source material to client)* | _____ | $_____ |
| Acceptance of Final Version | _____ | $_____ |
| Total | | $_____ |

## TERMS

1. TIME OF PAYMENT: Payment is due at each milestone upon the Client's acceptance of the Deliverables. All invoices are payable within 30 days of receipt. A 1½% monthly service charge is payable on all overdue balances. The grant of any license or right of copyright is conditional on receipt of full payment.

2. DEFAULT IN PAYMENT: The Client shall assume responsibility for all collection of legal fees necessitated by default in payment.

3. ESTIMATES: If this form is used for an estimate or assignment configuration, the fees and expenses shown are *minimum estimates only*. Final fees and expenses shall be shown when invoice is rendered. The Client's approval shall be obtained for an increase in fees or expenses that exceed the original estimate by 10% or more.

4. EXPENSES: The Client shall reimburse the Design/Developer for all expenses arising from the assignment, including the payment of any sales tax due on this assignment, and shall advance $_____ to the Developer for the payment of said expenses.

5. INTERNET ACCESS: Access to Internet will be provided by a separate Internet Service Provider (ISP) to be contracted by the Client and who will not be a party to this agreement.

6. PROGRESS REPORTS: The Designer/Developer shall contact or meet with the Client on a mutually acceptable schedule to report all tasks completed, problems encountered, and recommended changes relating to the development and testing of the Website. The Designer/Developer shall inform the Client promptly by telephone or email upon discovery of any event or problem that may delay the development of the work significantly.

7. DEVELOPER'S GUARANTEE OF PROGRAM USE: The Designer/Developer guarantees to notify the Client of any licensing and/or permissions required for art generating/driving programs to be used.

8. CHANGES: The Client shall be responsible for making additional payments for changes in original assignment requested by the Client. However, no additional payment shall be made for changes required to conform to the original assignment description. The Client shall offer the Designer/Developer the first opportunity to make additional changes.

9. TESTING AND ACCEPTANCE PROCEDURES: The Designer/Developer will make every effort to test all deliverables thoroughly and make all necessary corrections as a result of testing prior to handing over the deliverables, the Client shall either accept the deliverables and make the milestone payment set forth herein or provide the Designer/Developer written notice of corrections to be made and a suggested date for completion, which should be mutually acceptable to both the Designer/Developer and the Client. The Designer/Developer shall designate _____ (name) and the Client shall designate _____ (name) as the only designated persons who will send and accept all deliverables and receive and make all communications between the Designer/Developer and the Client. Neither party shall have any obligation to consider for approval or respond to materials submitted other than through the designated persons listed above. Each party has the right to change the designated person upon _____ days notice to the other.

10. WEBSITE MAINTENANCE: The Designer/Developer agrees to provide the Client with reasonable technical support and assistance to maintain and update the Website on the Internet during the Warranty period of _____ (days) at no cost to the Client. Such assistance shall not exceed _____ hours per calendar month. After the expiration of the Warranty Period, the Designer/Developer agrees to provide the Client with reasonable technical support and assistance to maintain and update the Website on the Internet for a monthly fee of $_____ for a period of _____ months after the last day of the Warranty period, payable 30 days prior to the commencement date of the Maintenance Period, and on the last day of each month after that. Such maintenance shall include correcting any errors or any failure of the Website to conform to the specifications. Maintenance shall not include the development of enhancements to the originally contracted project.

11. ENHANCEMENTS: Under the maintenance agreement, if the Client wishes to modify the Website, the Designer/Developer shall be given first option to provide a bid to perform such enhancements.

12. CONFIDENTIAL INFORMATION: The Designer/Developer acknowledges and agrees that the source materials and technical and marketing plans or other sensitive information, as specified by the Client, including all materials containing said information, that are supplied by the Client to the Developer or developed by the Developer in the course of developing the Website are to be considered confidential information. Information shall not be considered confidential if it is already publically known through no act of the Designer/Developer.

13. RETURN OF SOURCE INFORMATION: Upon the Client's acceptance, or upon cancellation of the project, the Designer/Developer shall provide the Client with all copies of originals of the source materials provided to the Developer.

14. OWNERSHIP OF COPYRIGHT: The Client acknowledges and agrees that the Designer/Developer retains all rights to copyright in the subject material.

15. OWNERSHIP AND RETURN OF ARTWORK: The Designer/Developer retains ownership of all original artwork, in any media, including digital files, and whether preliminary or final. The Client waives the right to challenge the validity of the Designer/Developer's ownership of the art subject to this agreement because of any change or evolution of the law and will return all artwork within 30 days of use.

16. CANCELLATION: In the event of cancellation of the assignment, ownership of all copyrights and any original artwork shall be retained by the Designer/Developer, and a cancellation fee for work completed, based on the prorated portion of the next payment and expenses already incurred, shall be paid by the Client.

17. COPY-PROTECTION: The Client must copy-protect all final art that is the subject of this agreement against duplication or alteration.

18. CREDIT LINES: The Designer/Developer shall be given credit on: (a) disk/CD, (b) documentation, (c) packaging, (d) Designer/Developer's mark on art.

19. ALTERATIONS: Any electronic alteration of original art (color shift, mirroring, flip-flopping, cropping, combinations of cut and paste, deletion) creating additional art is prohibited without the express permission of the Designer/Developer. The Designer/Developer will be given first opportunity to make any alterations required. Unauthorized alterations shall constitute additional use and will be billed accordingly.

20. OTHER OPERATING SYSTEM CONVERSTIONS: The Designer/Developer shall be given first option at compiling the work for operating systems beyond the original use.

21. UNAUTHORIZED USE AND PROGRAM LICENSES: The Client will indemnify the Designer/Developer against all claims and expenses arising from uses for which the Client does not have rights to or authority to use. The Client will be responsible for payment of any special licensing or royalty fees resulting from the use of graphics programs that require such payment.

22. WARRANTY OF ORIGINALITY: The Designer/Developer warrants and represents that, to the best of his knowledge, the work assigned hereunder is original and has not been previously published, or that consent to use has been obtained through the undersigned from third parties is original or, if previously published, that consent to use has been obtained on an unlimited basis; that the Designer/Developer has full authority to make this agreement; and that the work prepared by the Designer/Developer does not contain any scandalous, libelous, or unlawful matter. The warranty does not extend to any uses that the Client or others may make of the Designer/Developer's product that may infringe on the rights of others. THE CLIENT EXPRESSLY AGREES THAT IT WILL HOLD THE DESIGNER/DEVELOPER HARMLESS FOR ALL LIABILITY CAUSED BY THE CLIENT'S USE OF THE DESIGNER/DEVELOPER'S PRODUCT TO THE EXTENT SUCH USE INFRINGES ON THE RIGHTS OF OTHERS.

23. LIMITATION OF LIABILITY: The Client agrees that it shall not hold the Designer/Developer liable for any incidental or consequential damages that arise from the Designer/Developer's failure to perform any aspect of the Project in a timely manner, regardless of whether such failure was caused by intentional or negligent acts or omissions of the Designer/Developer or a third party. Furthermore, the Designer/Developer disclaims all implied warranties, including the warranty of merchantability and fitness for a particular use.

24. DISPUTE RESOLUTION: Any dispute is excess of $4500.00 (limit of small claims court) arising out of this agreement shall be submitted to final binding arbitration before a mutually agreed-upon arbitrator pursuant to the rules of the American Arbitration Association. The Arbitrator's word shall be final, and judgment may be entered in any court having jurisdiction thereof. The Client shall pay all arbitration and court costs, reasonable attorney's fees, and legal interest on any award of judgment in favor of the Designer/Developer.

25. ACCEPTANCE OF TERMS: The signature of both parties shall evidence acceptance of these terms.

## CONSENTED AND AGREED TO:

_____

Designer/Developer's Signature                    Date

_____

Authorized Signature                    Date

_____

Client's Name and Title