

## **Definitions and Interpretations**

The following Terms and Conditions are a legal Agreement between Zone 1 Media LLP hereinafter known as the "Supplier" and the "Client" for the purposes of creative design agency services. These Terms and Conditions set forth the provisions under which the Client may use the services supplied.

All clauses in this Agreement apply to any Project undertaken for any Client by the Supplier.

By accepting a Proposal or making a payment of invoice to use the services supplied, the Client acknowledges to have read, understand, and accept the Terms and Conditions of this Agreement, and agrees to be legally binding by these Terms and Conditions.

Unless the context otherwise admits words importing one gender shall include all other genders and words importing the singular shall include the plural and vice versa.

Reference to any statutory provisions in this Agreement shall include any statutory provisions, which amends or replaces it.

## **Outline of Agreement**

This Agreement details the Terms and Conditions agreed between the Parties for the design and development of a Project, (including technical and design details) or a service offered, hereinafter known as the "Project" for the Client to be undertaken by the Supplier.

## **Detailed Project Specification**

The Parties have agreed a detailed Project specification as defined in the Client's Proposal.

Any amendments proposed to this Project specification must be made in writing and delivered to the other party. Either party is entitled to request a meeting to discuss such amendments.

If such proposed amendments incur additional expense the Supplier is entitled to seek further payment to cover such expense.

It is the Client's responsibility to carry out any market research as to the viability and profitability of any Project before accepting any Quotation or Proposal.

## **Fees and Payment**

The Client will pay the agreed fees to the Supplier on delivery of the Project, completed according to the Project specification detailed in the Proposal. The Supplier will invoice the Client and the Client will pay the invoice, including Value Added Tax, (VAT) at the prevailing rate.

Payments may be made by BACS, cash, cheque, or (for overseas Client's), Pound Sterling International Money Order or previously agreed electronic funds transfer. The Supplier reserves the right to charge the Client any fees encountered as a result of such transfer.

Payment shall, unless otherwise agreed in writing, be made in full without any deduction or set-off within 30 days of the date of the invoice, except COD (Cash on Delivery) invoices, where immediate payment is required.

Returned cheques will incur an additional fee of £50.00 +VAT per returned cheque. The Supplier reserves the right to consider an account to be overdue in the event of a returned cheque.

Interest shall be payable on overdue payments at the rate of 4% over Barclays Bank base rate to run from the due date for payment thereof until receipt by the Supplier of the full amount whether or not after judgement. Where an account requires litigation to collect an overdue debt an administration fee of £100.00 plus VAT at the prevailing rate will be payable. Client's whose accounts become overdue agree to pay the Supplier reasonable legal expenses and third party collection agency fees in the enforcement of these Terms and Conditions.

The Supplier shall be considered entitled to remove the Suppliers' and/or the Client's material from any and all computer systems, until the amount due has been fully paid. This includes any and all unpaid monies due for services, including, but not limited to, hosting, domain registration, search engine submission, design and maintenance, sub-contractors, printers, photographers and libraries. Removal of such materials does not relieve the Client of their obligation to pay the due amount.

The Supplier will require payment on the completion of development milestones where the Project involves considerable design and development time to implement. Such development milestones and the amount of payment for the completion of each milestone to be included within the Project specification as defined in the Proposal or if not specified in the Proposal to be agreed in writing by the parties prior to the commencement of the Project.

The Supplier reserves the right to decline further work on a Project if there are invoices outstanding with the Client.

If a percentage of the total quoted price is required as a deposit, as outlined in the Client Proposal, this must be received and cleared before Project commencement.

Quotations and Proposals are valid for 30 days and all prices quoted exclude VAT unless otherwise stated.

Any credit provided to the Client may be changed or withdrawn at any time.

The Supplier reserves the right to alter prices at any time without prior notice. If a Quotation or Proposal at an original price has been made it will be valid for 30 days and subsequently during the life of the current commission, however additional work may be charged using the new pricing structure.

All Projects are subject to a minimum charge.

## **Expenses**

The Client will pay the expenses incurred by the Supplier during the Project, including travel to the offices of the Client where required, the purchase of computer consumables required for the Project and such other reasonable expenses directly related to the Project.

The Supplier will inform the Client in writing in advance if significant expenses not covered by the above clause that have to be incurred during the Project.

## **Delivery**

The Supplier will deliver the completed Project to the Client as outlined in the Proposal. This may be by way of Compact Disc, (CD) or such other data storage method as selected by the Supplier.

If the Client requires the completed Project to be loaded onto a filesaver using File Transfer Protocol (FTP) the Supplier is entitled to make an additional reasonable charge for this service. The Client is responsible for ensuring that the intended filesaver or disk space on the filesaver is properly configured. The Supplier will not load the completed Project onto a publicly available filesaver or disk space on such a filesaver until full payment is made. The Client may only use or publish the completed Project web site once full payment has been made to the Supplier.

At Project acceptance the Supplier can provide an estimated completion date, however we cannot guarantee this date as a final completion date.

The Supplier reserves the right to refuse to construct a Project that they may judge as unfit due to content or otherwise.

## **Delivery of Content & Materials**

The Client undertakes to deliver all the content and materials required for the Project and in the formats requested to the Supplier before commencement of the Project or at the milestones outlined in the Proposal.

Where this is not possible the Client will deliver such outstanding content and materials to the Supplier within 30 days of the start of the Project or milestone.

The Client will notify the Supplier in writing (as soon as possible) of any delays in delivering content and materials required for the Project and provide the Supplier with a revised timetable for supplying such content and materials.

The Supplier will not be responsible for any delays, missed milestones (where specified in the Project) or additional expenses incurred due to the late delivery or non-delivery of content and materials by the Client where required by the Supplier for the Project.

## **Notice**

Any notice given by either of the parties under this Agreement shall be served on the other party and addressed to that party's signatory by email, personal delivery, pre-paid recorded delivery, first-class post, or facsimile transmission to the receiving party as set out in this clause.

Any such notice shall be deemed to be effectively served as follows:

In the case of service by pre-paid recorded delivery or first-class post 48 hours after posting.

In the case of service by email, or facsimile transmission on the next working day.

## **Confidentiality**

Both parties shall keep confidential the specific terms of this Agreement and Project and not disclose them save to such employees or contractors as need to know the relevant information for the purposes of performing the Project detailed in this Agreement. The parties agree that all information marked "Confidential", or where not marked it is reasonable to judge such information as confidential, shall not be disclosed at any time during the Project or for a minimum period of 2 years after the completion of the Project, except where such disclosure is required by law or by order of a court in the jurisdiction of England.

The parties further agree that all information marked as a "Trade Secret" and reasonably judged to constitute a trade secret shall not be disclosed at any time during or after the expiry of this Agreement, except where such disclosure is required by law or by order of a court in the jurisdiction of England. Confidential information and Trade Secrets shall consist of, but not necessarily be limited to: technical, commercial, financial, operational, marketing or promotional information or data.

## **Credits and Publicity**

Subject to the Confidentiality clause above, the Client shall be able to refer to their working relationship with the Supplier for press and publicity purposes after receiving the written approval of the Supplier regarding the content of any such material.

Subject to the Confidentiality clause above, the Supplier shall be able to refer to their working relationship with the Client for press and publicity purposes. The Client agrees to allow the Supplier to place websites and other designs, along with a link to the Client's site on the Supplier's own website for demonstration purposes and to use any designs in its own publicity.

## **Intellectual Property Rights**

The Client undertakes to secure all copyright and any other appropriate licences, clearance or consents where required for the content and materials to be incorporated into the Project by the Supplier.

The Client grants to the Supplier for the term of this Agreement and Project a non-exclusive, revocable, royalty-free licence to use its name, logos, trademarks or devices ("Intellectual Property") for the purposes of creating the Project.

Neither party shall make any claim to the other party's content, materials or services during or after the expiry of this Agreement.

Neither party shall make any claim to the other party's trademarks or register or cause to be registered or apply for a materially similar trademark or imitation of a trademark during or after the expiry of this Agreement.

Neither party shall register or cause to be registered any company name materially similar to that of the other party.

The copyright for all material provided by the Supplier, such as source code, graphics, photographs video, animation and text, will remain the property of the Supplier until such time as payment has been made in full whereupon they will become the property of the Client.

If a choice of design is presented, only one solution is deemed to be given by the Supplier as fulfilling the contract. All other designs remain the property of the Supplier, unless agreed in writing that this arrangement has been changed.

## **Web Site Development**

The Supplier cannot guarantee the availability of any domain name. Where the Supplier is to register a domain name on behalf of a Client it will endeavour to do so but the Client should not assume a successful registration.

Neither party shall register or cause to be registered any domain name materially similar to that of the other party except where the Client specifically requests that the Supplier register domain names similar to that of the Client's on behalf of the Client in order to prevent their registration and use by third parties. In this case all reasonable fees and expenses incurred in registration of such domain names shall be payable by the Client as part of the Project cost.

The Client agrees that a web page built from a graphic design may not exactly match the original design because of the difference between the display in design software and the rendering of the code by internet browser software. The Supplier will endeavour to try and match the design as closely as is possible when building the code.

The Supplier shall make every effort to ensure sites are designed to be viewed by the majority of visitors. Sites are designed to work with the main browsers Internet Explorer and Mozilla Firefox latest releases. New layouts are tested with older browsers to ensure as much compatibility as possible. The Client agrees that the Supplier cannot guarantee correct functionality with all browser software across different operating systems.

The Client will link from the Client's completed Project web site homepage to the Supplier's homepage by way of a logo or graphic image as supplied by the Supplier or alternatively by way of a text hyperlink in the form, "designed by Zone 1 Media" or similar words. Such link will appear at the foot of the Project web site pages and/or homepage.

Once web design and development is complete, the Supplier will provide the Client with the opportunity to review the resulting work. The Supplier will make one set of minor changes at no extra cost within 14 days of the start of the review period. Minor changes include small textual changes and small adjustments to placement of items on the page. It does not include changes to images, colour schemes or any navigation features. Any minor changes can be notified to the Supplier by e-mail.

The Client undertakes not to materially alter or diminish the design and function of the Project web site without the prior written consent of the Supplier.

After site completion, the Client may wish to edit their web site themselves to make updates via their Content Management System (where included in the Client's Proposal). However, the Client agrees that in so doing they assume full responsibility for any issues which occur as a result of changing the web site themselves. If a Client or a third party of their choosing edits the web site and this results in functionality errors or the page displaying incorrectly, then the Supplier reserves the right to quote for work to repair the web site.

The Supplier grants the Client a non-exclusive licence to use the underlying code used to create the Project.

The Client shall not alter the coding of the Project web site or any other coding carried out as part of the Project with a view to creating a separate web site or licensing the Project web site to a third party without the prior written consent of the Supplier.

The Supplier may from time to time recommend to the Client that updates are needed to their site to comply with, including but not limited to, new legislations, software releases and web standards. The Supplier reserves the right to quote for any updates as separate work. The Client agrees that the Supplier is not liable for any failure to inform or implement these updates to their site. The Client agrees that it shall defend, indemnify, save and hold the Supplier harmless from any and all demands, liabilities, costs, losses and claims arising from omission to inform or implement these updates.

Due to the infinite number of considerations that search engines use when determining a site's ranking, the Supplier cannot guarantee any particular placement. Acceptance by any search engine cannot be guaranteed and when a site is accepted, the time it takes to appear in search results varies from one search engine to another. Rankings will also vary as new sites are added.

Any website hosting offered by the Supplier as part of a Project or in isolation is subject to the Supplier's Website Hosting Agreement Terms and Conditions. Full Terms and Conditions are available on the Supplier's web site: [www.zone1media.co.uk/hosting-agreement](http://www.zone1media.co.uk/hosting-agreement)

## **Warranties**

The Client confirms that to the best of their knowledge and belief that the content and materials supplied by the Client for the purposes of the Project are not blasphemous, defamatory or obscene and do not breach any applicable law or regulation.

## **Indemnities and Limitation of Liability**

Neither party shall be liable to the other under this Agreement in contract, tort, or otherwise (including negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentations) or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential or loss whatsoever.

The Client agrees to indemnify the Supplier against any claims, damages, losses, costs and expenses which the Supplier may sustain or incur in relation to any content and materials which the Client provides, such indemnity applying in respect of any claims for any breach of applicable law or regulation or any infringement of any intellectual property rights.

The Client acknowledges that it is for the Client to ensure that the resulting Project does not infringe the laws of any jurisdiction within which it is actively promoted.

The Supplier agrees to indemnify the Client against any claims, damages, losses, costs and expenses which the Client may sustain or incur in relation to breaches of the Confidentiality and Intellectual Property Rights clauses of this Agreement committed by the Supplier.

Nothing in this Agreement shall exclude or limit liability for death or personal injury resulting from the negligence of either party or their servants, agents or employees.

## **Termination**

Either party may terminate this Agreement immediately in the event that:

Either party commits a serious, grave or material breach or persistent breaches of this Agreement including non-performance, default or neglect of its duties, responsibilities and obligations under this Agreement, and

Such breach remains unremedied for a period of 30 days from written notice given by the other party specifying the breach and requiring its remedy.

Furthermore this Agreement may be terminated in the event that:

- (a) Either party is unable to pay or has no reasonable prospects of paying their debts the amount or aggregate amount of which equals or exceeds the bankruptcy level within the meaning of the Insolvency Act 1986, or
- (b) Being a company becomes subject to an administration order or goes into liquidation, (other than for the purpose of amalgamation or reconstruction), or
- (c) Has a receiver appointed to administer any of its property or assets, or
- (d) Has a receiver appointed to administer any of its property or assets, or
- (e) Makes any voluntary agreement or enters into a compromise for the benefit of its creditors, or
- (f) Fails to make payment in accordance with the terms of this Agreement.

On the termination of this Agreement any completed parts of the Project already delivered to the Client or test examples of the Project not already paid for by the Client will be returned to the Supplier. Furthermore the Client shall not retain any copies of the returned Project, parts thereof or test examples of the Project.

Any termination of this Agreement shall be without prejudice to any rights accrued in favour of either party in respect of any breach committed prior to the date of (or giving rise to) such termination and to those provisions of this Agreement which are by their construction intended to survive such termination (including, without limitation, the Confidentiality and Intellectual Property Rights clauses and this clause).

## **Assignment**

Neither party may assign or otherwise transfer this Agreement or any rights, duties and obligations hereunder without the prior consent in writing of the other party.

## **Force Majeure**

Neither party shall be liable for delay or failure to perform any obligation under this Agreement if the delay or failure is caused by any circumstances beyond its reasonable control, including but not limited to acts of god, war, civil disorder or industrial dispute. If such delay or failure continues for a period of at least 30 days, the party not subject to the force majeure shall be entitled to terminate this Agreement by notice in writing to the other.

## **Joint Venture or Partnership**

Nothing in this Agreement shall be construed as creating a partnership, joint venture or an agency relationship between the parties and neither party shall have the authority or power to bind the other party or to contract in the name of or create a liability against the other party.

## **Non-Solicitation**

The Client undertakes during the Project development period and for a period of six months after its completion not to directly or indirectly solicit or induce any of the Supplier's employees to leave the employment of the Supplier whether to work on a freelance or consultancy basis or to be directly employed by the Client.

## **General**

The Client agrees to allow the Supplier all necessary access to computer systems, servers and other locations, as required, in order to complete a Project and until all due funds are cleared, including the necessary read/write permissions, usernames and passwords. The Client also agrees to allow the Supplier access to any computer systems, usernames and passwords required to remove material, data and/or sites for failure to comply with these Terms and Conditions.

Failure by either party to enforce any accrued rights under this Agreement is not to be taken as or deemed to be a waiver of those rights unless the waiving party acknowledges the waiver in writing.

It is hereby declared that the foregoing paragraphs, sub-paragraphs and clauses of this Agreement shall be read and construed independently of each other. Should any part of this Agreement or its paragraphs, sub-paragraphs or clauses be found invalid it shall not affect the remaining paragraphs, sub-paragraphs and clauses.

No addition to or modification of any clause in this Agreement shall be binding on the parties unless made by a written instrument and signed by the signatories to this Agreement or their duly authorised representatives.

This Agreement sets out the entire agreement and understanding of the parties and is in substitution of any previous written or oral agreements between the parties.

## **Jurisdiction**

This Agreement shall be interpreted construed and enforced in accordance with English law and shall be subject to the exclusive jurisdiction of the English Courts.