

in.house.media - Website Design Terms & Conditions

1. DEFINITIONS

- 1.1 In these Conditions, the following expressions shall have the following meanings:
"Additional Items" means any goods (including but not limited to software) and /or services that are provided by the Company in addition to the Website;
"the Company" means IHM Limited trading as In House Media and includes any subsidiary company of the Company and reference to the consent authority or agreement of the Company means consent authority or agreement in writing signed by a Director of the Company;
"Contract" means the order placed by the Customer with the Company as set out in the Company's order form on these terms and conditions and any other document or documents agreed by the Company to be incorporated in a Contract between the Company and the Customer;
"Transgression" shall mean any breach of contract, tort or other act of default, omission or statement of the Company its employees, agents or subcontractors in respect of which the Company is liable to the Customer;
"Specification" means the specification for the Website as agreed between the Company and Customer and set out in the Company's order form or any other document agreed in writing between the parties;
"Website" means the computer software programme to be written by the Company in accordance with the Specifications.
- 1.2 Terms defined in the Company's order form have the same meanings in these terms and conditions.

2. GENERAL

- 2.1 These terms and conditions apply to all contracts for the supply of the Website by the Company. No additions or modifications to or terms inconsistent with these terms and conditions shall be binding unless agreed in writing by the Company. In the event of any inconsistency between these terms and conditions and any other document forming part of the Contract, these terms and conditions shall be paramount unless expressly referred to and varied with the consent of the Company.
- 2.2 No Contract for the supply of the Website will be created by the acceptance of an order until the Company acknowledges the order or commences work on the Contract.
- 2.3 The Customer shall provide and the Company shall be entitled to require, and rely on, and be deemed to have relied on the Customer's skill and knowledge, assistance and co-operation in developing the Specifications and any additions or amendments to the Specifications. The Customer shall also provide (at the Customer's expense) such relevant information and such office, development and testing facilities at the Customer's computer installation as the Company may reasonably require during the performance of the Contract.

3. COMPANY'S OBLIGATIONS

- 3.1 The Company shall design and supply the Website to carry out the functions set out in the Specifications. For the avoidance of doubt any advertising material that the Company provided to the Customer will not form part of the Contract. All warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law from the Contract and terms and conditions.
- 3.2 The Company shall carry out the Contract with reasonable skill and care and in a professional manner.
- 3.3 The Company may in the Company's order form or otherwise provide the Customer with an estimated completion date for the Website but time shall not be of the essence. In respect of any estimated completion dates and such date or dates shall be estimates only and are not binding on the Company. Any estimated dates given by the Company to the Customer in respect of the Website in the Company's order form or otherwise shall be conditional upon the Company receiving from the Customer content, designs and any other information for the Website in a final form from the Customer, within any timescales specified by the Company and any delay in the Customer providing such content, designs and any other information will result in the Company receiving an extension of time to any such estimated completion dates.
- 3.4 If the Customer wishes to make modifications to the Specifications the modifications must be agreed in writing by the Company within fourteen days after the date the Specifications have been sent to the Customer (unless otherwise agreed between the parties).
- 3.5 The Customer shall supply the Company with such details in writing of any modifications that the Company may request and the Company will provide an estimate to the Customer of the additional cost for making the modifications which shall be chargeable at the Company's then current hourly rate.
- 3.6 The Company shall provide the Customer with access to the Website whilst it is under construction.
- 3.7 The Company agrees to check any faults or errors in the Website which are reported by the Customer to the Company whilst the Website is under construction. The Company will take all reasonable steps to correct any faults or errors but the Company does not warrant that it will be completely free of errors.
- 3.8 When the Company has completed the Website to its satisfaction it shall arrange for the Customer to inspect and test the Website to ensure that it complies with the Specifications. To the extent that such tests show that the Website does not meet the Specifications the Company shall, as soon as possible, (but subject to clause 3.10 below) make such modifications to the Website as are reasonably required to ensure that the Website does meet the Specifications and the Website shall then be resubmitted for testing. If the Customer shall not inspect and test the Website within one week from the date of completion by the Company of either the Website or any modifications pursuant to this clause 3.8 then the Customer shall be deemed to have confirmed that it complies with the Specifications and is approved by the Customer.
- 3.9 If the Website complies with the Specifications but the Customer requests that further modifications be made, the Company shall be entitled to charge the Customer for those modifications at the Company's then current hourly rate.
- 3.10 If the Company discovers that the Website will not meet the Specifications due to any error or omission of the Customer in the material supplied by or on behalf of the Customer then the Company shall promptly notify the Customer and the Company will provide an estimate to the Customer of the additional cost of correcting or completing the Website which will be chargeable at the Company's then current hourly rate.
- 3.11 As soon as it is established that the Website meets the Specifications all obligations by the Company shall be deemed to have been performed and all payments due and outstanding together with any Additional Items shall be payable. The Website will be deemed to meet the Specifications when
- 3.11.1 the Customer signs a completion of work form to indicate it is satisfied; or
- 3.11.2 the Customer has failed to sign a completion of work form from 7 days after notice from the Company declaring that the Website meets the Specifications and requesting that the completion of work form be signed and returned.
- 3.12 If the Company is requested to register or renew a domain name on behalf of the Customer, the Company shall use all reasonable endeavours to do so. However, the Company accepts no responsibility if, at the time of making the application for the registration or renewal, the domain name is no longer available, or the registration does not complete with the registry, for whatever reason. It is the customer's responsibility to contact the Company to inform them to register or renew their domain name and check registrations complete.
- 3.13 If the Company is requested to submit details of the Customer's Website to any global search engines the Company shall make the appropriate applications to do so. However, the Company will not be liable for any delays in the processing of applications or any failure by the search engine to process or accept the application. The Company does not guarantee the Customer's position on any internet search engine.

4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall promptly supply such information and documents as the Company may reasonably request for the proper performance of its obligations under the Contract.
- 4.2 The Customer warrants that it will not allow any unauthorised access to the Website whilst it is under construction and it shall not make any amendments to the Website whilst it is under construction without the consent of the Company.
- 4.3 The Customer will inspect and test the Website to establish that it meets the Specifications when the Company has completed it. As soon as it is established that the Website meets the Specifications the Customer shall provide the Company with a signed completion of work form to indicate that the contract has been completed to its satisfaction. If the Customer unreasonably withholds its signature to the completion of work form for more than 7 days after its signature has been requested the Website will be deemed to have met the Specifications.
- 4.4 The Customer shall indemnify the Company, its employees and its agents against any damage to person or property occurring whilst they are on the Customer's premises.
- 4.5 The Customer shall comply with the Company's policies which are in place from time to time in respect of the Contract.

5. PAYMENT

- 5.1 For the design and supply of the Website the Customer shall pay the sums specified in the Company's order form in the instalments and on the dates specified in the Company's order form. If the Customer wishes to request any amendments to the Website or if the Company after commencing the Contract determines that more work is required in relation to the Website than initially believed, then such amendments or additional work shall be discussed between the Company and Customer, and then either:
- 5.1.1 any variations in pricing for such work which the Company (acting reasonably) may determine, shall be notified to the Customer by the Company in writing and if agreed by the Customer shall be an Additional Item; or
- 5.1.2 the Company may decide not to undertake any such amendments or additional work.
- 5.2 Any Additional Items must be paid for within 30 days of the date of the invoice. For the avoidance of doubt, if any additional software is required in respect of the Website that was not initially anticipated by the Company then the Company shall be able to charge the Customer for such software as an Additional Item and if the Company's invoice is not paid with the 30 day period set out in this clause 5.2 then such additional software will not be supplied by the Company.

- 5.3 Should the Customer fail to make any payment when due under the Contract, the Company shall have the right by notice in writing forthwith to suspend all further work on the Website until the default is made good by the Customer. If any instalments remain unpaid for more than 14 days after its due date for payment all further instalments of the Contract Price shall be immediately due and payable.
- 5.4 If all or part of the price for the Contract or any Additional Items remain unpaid after the due date the Company shall be entitled to charge interest on any unpaid balance at 4% per annum above Barclays Bank plc lending base rate for the time being, such interest being paid in full together with the unpaid balance.

6. TERMINATION

- 6.1 The Company shall be entitled to terminate the Contract forthwith and recover all losses or damage resulting to the Company (including but without limitation to loss of profit or other consequential loss) if:
- 6.1.1 the Customer has a bankruptcy petition presented against him, or a bankruptcy order is made, if the Customer makes or seeks to make any composition or arrangement with his or its creditors, if the Customer makes a proposal to his creditors for a voluntary arrangement or applies for an interim order, if an encumbrancer takes possession of any of the Customer's assets, or any of the Customer's assets are taken in execution or process of law, if a petition is presented or an order is made or a resolution is passed for the winding up of the Customer, if a petition is presented or an order is made for an administration order to be made in relation to the Customer, or if a receiver or administrative receiver is appointed over any of the Customer's assets (or any analogous event occurs to the Customer in its jurisdiction); or
- 6.1.2 the Customer fails to make any payment owed to the Company on the due date as specified in the Company's order form;
- 6.1.3 the Customer is in breach of any contract with the Company (including this Contract) and fails to remedy the same within seven days of notice so to do or immediately if the breach shall be unremediable;
- 6.1.4 if no agreement can be reached between the Company and the Customer regarding modifications as provided for in Clause 3.

7. INTELLECTUAL PROPERTY

- 7.1 The copyright in all software that is supplied by the Company remains the property of the Company or that of its licensor.
- 7.2 The Company grants the Customer a non-exclusive, non-transferable licence to use the software, written by the Company, for use exclusively in conjunction with the Website.
- 7.3 The Customer acknowledges that any and all of the copyrights, trademarks, trade names, patents and other intellectual property rights and confidential information created, developed, embodied in or in connection with the Website shall be and remain the sole property of the Company unless otherwise agreed by the parties or to the extent supplied by the Customer. The Customer shall not during or at any time after the completion, expiry or termination of the Contract in any way question or dispute the ownership by the Company of any such rights.
- 7.4 The Customer shall indemnify and keep the Company indemnified from and against the consequences of the Company suffering any claims of infringements of copyright, patents, trademarks, industrial designs or other property rights arising from the provision of the Contract and in particular from incorporating any material into the Website at the request of the Customer.
- 7.5 In the event that any such infringement occurs or may occur, the Customer may request the Company to modify or amend the Website or infringing part thereof so that the same becomes non-infringing and if the Company agrees to modify and /or amend the Company shall be entitled to charge for the additional cost for making the modifications and /or amendments which shall be chargeable at the Company's then current hourly rate.
- 7.6 In the event that new inventions, designs or processes evolve in performance of or as a result of the Contract, the Customer acknowledges that the same shall be the property of the Company unless otherwise agreed in writing by the Company.
- 7.7 For the purposes of this Clause "confidential information" includes all information, data, drawings, specifications, documentation, software listings, source or object code which the Company has created or used or contributed to in performance of the Contract.

8. PERFORMANCE AND FORCE MAJEURE

- 8.1 The Company takes all reasonable steps to perform its obligations and deliver within the time specified but such times are estimates only. The Company shall not be liable for late performance and delays shall not entitle the Customer to rescind the Contract.
- 8.2 Without prejudice to the generality of Clause 8.1, the Company shall have no liability for any delay or default in performance of any obligation caused directly or indirectly by breakdown or unavailability of any computer hardware or parts thereof, computer software and parts thereof, telecoms connections or power supply or any other cause or causes beyond the Company's reasonable control. If such cause or causes prevent delivery for three months or more beyond the due date for delivery, either party may cancel the order on giving written notice to the other at least 28 days before the order may reasonably be expected to be completed.
- 8.3 To the extent the Website incorporates software or service of a third party which becomes out of date or obsolete, the Customer acknowledges that in future the Website will need updating or changing to take account of such updates or obsolescence, which if required, will be charged as an Additional Item.

9. EXEMPTIONS AND EXCLUSIONS

- 9.1 The Company shall not be liable to the Customer for any loss, injury or damage whatsoever or howsoever caused arising directly or indirectly in connection with the Contract or the Specifications, except as specified in Clause 9.7 or to the extent to which it is otherwise unlawful to exclude such liability.
- 9.2 Notwithstanding the generality of 9.1 above, the Company expressly excludes liability for consequential loss, indirect damage, or corruption to other software or data, or for loss of profit, business, revenue, goodwill or anticipated savings.
- 9.3 The Company expressly excludes liability for (but not limited to):-
- 9.3.1 the failure by the Customer to properly check the Specifications or functions or expected results submitted by the Company to the Customer for checking by the Customer;
- 9.3.2 the supply of incorrect material or data to the Company by the Customer;
- 9.3.3 the failure by the Customer to properly test and inspect the completed Website.
- 9.4 If any of the events in 9.3 occur the Company will advise the Customer of any additional cost which will be incurred in correcting such errors and of the extended time for completion and will make any necessary alterations and extend the time for completion of the Contract, such costs to be charged as an Additional Item.
- 9.5 The Company will take all reasonable steps to ensure that the Website will meet the Specifications but does not warrant that (whether checks have been made or not) it will be completely free of error and shall not be liable to the Customer for damage, loss or injury howsoever caused arising from the need to make corrections.
- 9.6 It is the responsibility of the Customer to satisfy itself as to the workability, reliability, accuracy and suitability of the Website and the Specifications and no condition warranty or other term express or implied (by statute or otherwise) is given by the Company that the Website will enable the Customer to attain any particular performance or result or will be suitable for any particular purpose or use under specific conditions notwithstanding that such particular purpose or conditions have been made known to the Company.
- 9.7 In all tests and checking operations responsibility for seeing they are correctly carried out shall rest primarily on the Customer who shall co-operate fully with the Company in all such tests and checks.
- 9.8 The Company accepts liability for death or personal injury to the extent that it results from the negligence of the Company, its agents or its employees or authorised representatives.
- 9.9 To the extent that the Company is held legally liable to the Customer for any single Transgression, the Company's liability for the same shall not exceed the value of the Contract. A number of Transgressions whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as a single Transgression.

10. NON-SOLICITATION OF STAFF

- 10.1 The Customer undertakes that it shall not during this Agreement and for a period of one year following its expiry or termination employ or contract the services of any person who is or was employed or engaged by the Company in connection with the Contract.

11. WAIVER

- 11.1 Failure or neglect by the Company to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of the Company's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice the Company's rights to take subsequent action.

12. NOTICES

- 12.1 Any notice required under the Contract shall be deemed served if sent by registered or recorded delivery post or by facsimile or e-mail addressed to the party for whom it is intended at such party's registered or main office or last known address and shall be deemed to have been served 48 hours after the date of posting or 12 hours after the time of transmission if by facsimile or e-mail.

13. LEGAL CONSTRUCTION, INTERPRETATION AND LIMITS OF THE CONTRACT

- 13.1 The Contract shall be governed in all respects by English Law and shall be subject to the jurisdiction of the English Courts. The text of this Contract and these Conditions written in the English language is the authentic text and any difficulties or uncertainties arising shall be solved solely by reference to that text.
- 13.2 Save for statement or representations confirmed in writing in this Contract, no oral statements of whatsoever nature and by whomsoever made shall form part of the Contract. In contracting with the Company the Customer acknowledges that he has not relied on any oral statements or representations made to him save those confirmed as aforesaid.
- 13.3 Clause headings are for convenience only and do not affect the construction of this document.