



# TERMS AND CONDITIONS

## 1. DEFINITIONS AND INTERPRETATION

1.1 The following terms as used herein shall have the meaning as stated:

“Company” means ClientsFirst Limited;

“Conditions” means these Conditions of Supply;

“Confidential Information” means any information disclosed by one (the disclosing party) to another (the receiving party) if the disclosing party has notified the receiving party that the information is confidential or the information could reasonably be supposed to be confidential;

“Contract” means any contract between the Company and the Customer for the supply of Services, incorporating these Conditions;

“Customer” means any person, firm, company or other organisation who is the addressee of the Company’s quotation or acceptance of order issued by the Company and shall include any successor-in-title of the Customer and any company or entity arising (wholly or partly) by way of any merger, amalgamation, reorganisation or acquisition of the Customer;

“Deliverables” means all documents, products and materials developed by the Company or its agents, subcontractors, consultants and employees in relation to the Services in any form, including, without limitation, computer programs, data, reports and specifications (including drafts);

“Input Material” means any documents, plans, drawings, designs or other materials, and any data or other information provided by the Customer to the Company relating to the Services;

“Intellectual Property Rights” means any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;

“Output Material” means any documents, plans, drawings, designs or other materials, and any data or other information provided by the Company to the Customer relating to the Services;

“Services” means any services agreed in the Contract to be performed by the Company for the Customer (including any part or parts of them);

“Website” means the Customer’s website in respect of which the parties have agreed that the Services will be provided.

- 1.2 A reference to a clause is to a clause of these Conditions. Clause headings shall not affect the interpretation of these Conditions.
- 1.3 Any reference to “parties” means the parties to the Contract and “party” shall be construed accordingly.
- 1.4 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 Words in the singular include the plural and in the plural include the singular.

## 2. APPLICATION OF CONDITIONS AND DESCRIPTION OF SERVICES:

- 2.1 All quotations are made and all orders are accepted by the Company subject only to these Conditions, which shall prevail notwithstanding any other terms and conditions which the Customer shall bring to the Company's notice. All quotations are based on the project being setup and designed to run on the Company's recommended hosting, whereby the Company shall have full access and the full ability to apply any relevant server updates and patches. Any request for any project to be installed and run on third party hosting not provided by the Company must be raised at the outset and shall be subject to the Company's written consent. All relevant server access would need to be provided by the Customer at the outset to confirm the feasibility of the request to use third party hosting not provided by the Company; this is because any changes to hosting will incur additional costs and will require additional testing. Furthermore, the proprietary code may not be transferable or suitable for transfer to the third party hosting service provider without first putting an appropriate written agreement or a suitable valid licence in place.
- 2.2 Any quotation is given on the basis that no Contract shall come into existence until the Company accepts the Customer's order in accordance with the provisions of clause 2.3. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.
- 2.3 The placing of an order following any quotation or other indication of price shall not be binding on the Company unless and until accepted by the Company in writing.
- 2.4 The Customer shall ensure that the terms of its order and any Input Material and/or any applicable specification are complete and accurate.
- 2.5 Any typographical, clerical or other accidental errors or omissions in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 2.6 The Company accepts orders only on the basis that those instructing the Company do so as principals and are therefore liable directly to the Company for all payments of account.
- 2.7 In certain circumstances, the Company is required by law to collect evidence of identity from its customers. If the Customer fails to supply any due diligence evidence which the Company requests, the Company will be unable to provide the Services to the Customer.
- 2.8 No order of the Customer which has been accepted by the Company may be cancelled by the Customer, except with the Company's express agreement and on such terms as the Company may require.
- 2.9 No order of the Customer which has been accepted by the Company may be varied, altered or deferred by the Customer, except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of such variation, alteration or deferment.

### 3. PARTICULAR REQUIREMENTS APPLYING TO CERTAIN SERVICES:

Where the Company is to provide website design and development services to the Customer:

- 3.1 Unless otherwise agreed between the Customer and the Company, the Customer agrees to provide the component parts of the Website (namely the text and images). No refund will be made in the event that the Customer fails to provide sufficient content to complete the design of the Website. If the Website is an e-commerce website, product entry is the Customer's responsibility unless agreed otherwise.
- 3.2 Unless otherwise agreed between the Customer and the Company, the Customer agrees to work in line with the written project plan, or other written communication which details deliverables against milestones. The Company reserves the right to require payment on the completion of project milestones. The Company 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 Customer where required by the Company for the project.
- 3.3 Proofs of all work will be submitted for the Customer's approval and the Company shall incur no liability for any errors not corrected and communicated by the Customer in proofs so submitted. Any alterations suggested by the Customer and additional proofs necessitated thereby may result in additional charges.
- 3.4 All content must be supplied in a suitable digital format unless agreed otherwise beforehand. Failure to supply material in digital format may result in extra charges being made for processing content for use on the Website. Where

the content which is provided is in a form where a significant amount of editing, adjustment or copywriting is required, a further charge may be made.

- 3.5 The Customer grants the Company permission to utilise all content, text, logos and any other customer materials or identity for the purposes of creating the Website.
- 3.6 A design credit with a link to the Company's website shall appear on all pages of the Website either in text or graphic format. The link will be designed to fit the overall design of the Website unless otherwise agreed.
- 3.7 The Company retains the right in all cases to use the Services in any manner, at any time and in any part of the world, for the purposes of advertising or otherwise promoting the Company's work.
- 3.8 The Customer must provide the Company with copies of the Customer's terms and conditions and any privacy statement that the Customer wishes to be incorporated into the design.
- 3.9 In the event that the Company is unable to complete a Website because of lack of text and/or pictures, then text may be added using sample text and pictures using appropriate library pictures. At this point the Website will be considered completed.
- 3.10 The Company will provide the Customer with the Company's estimated timescale for progress and completion of the Services and the Company will use its reasonable endeavours to meet those timescales (as long as the Customer performs the Customer's obligations promptly) but, unless the Company agrees otherwise, any timescales or projected completion dates are estimates only and the Company cannot guarantee that they will be met. In any event, the Company shall have no liability to the Customer if the Company is delayed in performing or is unable to perform any of its obligations under the Contract due to circumstances beyond its reasonable control.

- 3.11 The acceptance procedure shall be as follows:
- (a) when the Company considers the design to be completed, the Website will be uploaded to a test domain for the Customer to preview and the Customer will receive notification by telephone or email;
  - (b) the Customer will have seven days from the notification to carry out an appraisal of the design and inform the Company of any changes required to correct any errors;
  - (c) the Company will carry out the agreed amendments within fourteen days. The Customer will then have a further seven days to appraise the changes to the design and inform the Company of any errors in the changes; and
  - (d) after this period the design is considered as accepted and any further amendments will be chargeable.
- 3.12 The Customer shall pay the charges for the website design and development services to the Company in accordance with the provisions of clause 7.
- 3.13 The Company will aim to ensure that the Website will function correctly on the server on which it is initially installed. The Company cannot guarantee correct functionality on all different server options due to the large number of possible outcomes. The Company recommends using the latest version of any web browser. The Website will be designed and developed to work with the current and previous two versions (at the time of development) of web browsers including Internet Explorer / Edge, Mozilla Firefox, Safari and Google Chrome. Should an update to any browser impair any functionality of the Website, the Company will investigate the matter, but additional costs may be incurred in undertaking any compatibility testing and/or applying any relevant updates to the Website.
- 3.14 All work is based upon the agreed functional requirements specification (FRS) which is provided and agreed in writing to the Customer before any work commences; the FRS essentially comprises the 'brief' to the Company and if the Customer subsequently causes this brief to change substantially, the Company reserves the right to impose additional charges.
- Where the Company is to provide graphic design and branding services to the Customer:
- 3.15 The parties shall agree a detailed project specification with respect to any graphic design and branding services to be undertaken by the Company. Any amendments proposed to the project specification must be made in writing and delivered to the other party. If such proposed amendments incur additional expense the Company is entitled to seek further payment to cover such expense. The Customer agrees that the Company holds no responsibility for any amendments made by any third party, before or after the final proof is signed off by the Customer.
- 3.16 Any indication given by the Company of a project's duration is to be considered by the Customer to be an estimate. The Company cannot be held responsible for any project over-runs, whatever the cause.
- 3.17 The Company reserves the right to require payment on the completion of project milestones where the project involves considerable time to implement. The Company reserves the right to define such milestones and the amount of payment to be paid for each.
- 3.18 The Company will deliver the completed project to the Customer by way of a method selected by the Company. If the Customer requires the completed project to be loaded onto a fileserver using File Transfer Protocol (FTP) the Customer is responsible for ensuring that the intended fileserver or disk space on the fileserver is properly configured.

- 3.19 On completion of the project, the Company will require the final proof to be signed off by the Customer. Sign off by the Customer will release the Company from undertaking further work related to the project.
- 3.20 The Customer undertakes to deliver all the content and materials required for the project and in the formats requested to the Company before commencement of the project. Where this is not possible the Customer will deliver such outstanding content and materials to the Company within 7 days of the start of the project. The Customer will notify the Company in writing (as soon as possible) of any delays in delivering content and materials required for the project and provide the Company with a revised timetable for supplying such content and materials. The Company 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 Customer where required by the Company for the project.
- 3.21 The Company will not be held responsible for any image quality which the Customer later deems to be unacceptable. The Company shall not be held responsible for the quality of any images which the Customer wishes to be scanned from printed materials. Additional expenses may be incurred for any necessary action, including, but not limited to, photography and art direction, photography searches, media conversion, digital image processing or data entry services, not agreed at outset in the FRS.
- 3.22 The Company will not include in its designs, any text, images or other data which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities. The Company also reserves the right to refuse to include submitted material without giving a reason. If the Company includes images and/or data in good faith, and subsequently discovers them to be in contravention of its inclusion policy or any law or regulation, the Customer is obliged to allow the Company to remove the offending material without hindrance, or penalty. The Company shall be held in no way responsible for the inclusion of any such material.
- 3.23 Unless otherwise agreed at briefing stage, all artwork produced remains the property of the Company. This excludes photography supplied or purchased and/or any branding images supplied or not produced by the Company; the use by the Customer of any material provided by the Company's suppliers shall be subject to the Company's supplier's terms, details of which will be provided to the Customer. Intellectual Property Rights in the artwork are licensed for use to the Customer upon receipt of full payment from the Customer on the basis that the artwork may not be modified, re-used or re-distributed in any way or form without the express written consent of the Company. If a choice of design concepts is presented, only one concept is deemed to be given by the Company as fulfilling the Contract. All other design concepts remain the property of the Company, unless agreed in writing that this arrangement has been changed. By supplying text, images and other data to the Company for inclusion in the Customer's artwork or other medium, the Customer declares that it holds the appropriate Intellectual Property Rights permissions. The ownership of such materials will remain with the Customer, or rightful Intellectual Property Rights owner. The Customer is also responsible for arranging, prior to publication, any necessary legal clearance of materials. Should the Company or the Customer supply an image, text, data, audio clip or any other file for use in a website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitations, the Customer will agree to allow the Company to remove and/ or replace the offending material without hindrance, or penalty. The Company is to be held in no way responsible for

any such material being included. The Customer agrees to fully indemnify and hold the Company free from harm in any and all claims resulting from the Customer not having obtained all the required Intellectual Property Rights permissions.

- 3.24 The acceptance procedure shall be as follows:
- (a) when the Company considers the work to be completed, the Customer will receive notification by telephone or email;
  - (b) the Customer will have seven days from the notification to carry out an appraisal of the work and inform the Company of any changes required to correct any errors;
  - (c) the Company will carry out the agreed amendments within fourteen days. The Customer will then have a further seven days to appraise the changes to the work and inform the Company of any errors in the changes; and
  - (d) after this period the work is considered as accepted and any additional amendments will be chargeable.
- 3.25 The Customer shall pay the charges for the graphic design and branding services to the Company in accordance with the provisions of clause 7.
- 3.26 On the expiration or termination of the Contract, any completed parts of the project already delivered to the Customer or test examples of the project not already paid for by the Customer shall be returned to the Company. Furthermore, the Customer shall not retain any copies of the returned project, parts thereof or test examples of the project.
- 3.27 All work is based upon the brief agreed in writing with the Customer before any work commences; if the Customer subsequently causes this brief to change substantially, the Company reserves the right to impose additional charges.

Where the Company is to provide search engine optimisation services to the Customer:

- 3.28 The Company will promote the Website in accordance with the package of Services purchased by the Customer.
- 3.29 The search engine targeted will be Google UK unless otherwise stated.
- 3.30 The Company will, in its sole discretion, choose suitable sets of words to search for in the search engine and the position in the results obtained using these words will be used for assessing search engine listings. A listing is where the search engine is queried with the words chosen by the Company and the Website address or a link to that address appears in the results returned.
- 3.31 The Company will optimise pages on the Website for the search engine, in accordance with the relevant Service package description (which may include adding, deleting and/or altering text, images, pages, meta-tags, titles, mark-ups, style sheets, scripts, internal and external links and Website structure).
- 3.32 The Customer must provide the Company with log-in information (CMS username and password and FTP username and password) to allow the Company to gain access to the Website. The Company will maintain confidentiality of log-in information. The Customer must inform their webmaster or anyone else who has access to the Website that the Company will be performing search engine optimisation services on the Website.
- 3.33 The Customer understands that the search engine is an independent company which selects and rank sites using its own criteria and therefore to obtain a high ranking the Customer must follow the Company's recommendations for optimising the Website for search engine listing. If the Customer fails to follow the Company's recommendations then the results achieved by the Company will have considerably less importance than would be achieved otherwise.

- 3.34 The Customer shall assist the Company in ensuring that the Company has the unrestricted ability to optimise the structure and content of the Customer's web pages. Such changes generally have a minimal visual impact. The Company will work directly with the Customer in order to maintain the original look and feel of the Website.
- 3.35 Where any changes to the Website made by the Company or on the recommendation of the Company are altered, reversed or deleted, then the Customer must notify the Company immediately. The Company may apply an additional charge in respect of restoration and remedial work.
- 3.36 The Customer will provide to the Company:
- (a) the ability to access and make changes to the Website (or, where the Company agrees, the Customer will promptly make any changes to the Website requested by the Company);
  - (b) assistance in determining appropriate keywords and key phrases which should be targeted using the Services;
  - (c) direct access to any existing analytical data concerning the Website, such as data concerning referral sources, visitor activity, Website usage, conversion rates, and similar data.
- 3.37 The Customer grants the Company a non-exclusive licence to use the Website to the extent required for the Company to perform its obligations and exercise its rights under the Contract.
- 3.38 Where the Company modifies the Website in the process of providing the Services, the Company hereby grants to the Customer a non-exclusive royalty-free licence to use such modifications in connection with the Website.
- 3.39 The Customer acknowledges that:
- (a) search engine algorithms will change from time-to-time, which may affect the Website's rankings in the search engine results pages, and the Company has no control over such changes;
  - (b) it can take many months for the Services to have any significant effects upon the ranking of a Website in the search engine results pages;
  - (c) search engine optimisation site promotion is an ongoing task and, should the Customer terminate the Contract and/or stop promoting the Website, that would be likely to have a negative impact upon the effects of the Services;
  - (d) the Company will not be responsible for any alterations to the Website made by the Customer or any third party that reverse or effect changes made to the Website by the Company as part of the Services;
  - (e) the promotion of the Website may lead to higher traffic levels and bandwidth requirements for the Website, and the Customer will be responsible for arranging and paying for such requirements;
  - (f) notwithstanding the Services, the Website's search engine results page rankings and traffic levels may decrease as well as increase;
  - (g) it is not possible to give any guarantees for any specific result on the search engine, nor can the Company quantify the level of increased traffic or sales or give any guaranteed positioning as a result of the Services; and
  - (h) the Company does not own or control any directories to which the Website may be submitted, and no refunds will be given in the event of any refusal to include the Website in any directory database.
- 3.40 The search engine optimisation services shall be provided for such minimum period and may only be terminated upon such notice period as may be stipulated by the Company, subject to earlier termination under clause 12.

Where the Company is to provide email marketing services to the Customer:

- 3.41 The Company does not warrant that the Services will be uninterrupted, error, bug or virus free or that the delivery of emails will be without delay.
- 3.42 It may be necessary to temporarily suspend the Services from time to time, although the Company will provide the Customer with as much notice as possible of temporary suspensions of the Services. The Company may disable the Customer's account if the Customer is damaging the server's reputation.
- 3.43 The delivery of emails to recipients cannot be guaranteed and is dependent upon accurate and up to date email addresses, upon suitable internet availability and connectivity, on various anti-spam and junk mail policies adopted by the recipients' email service providers as well as restrictions regarding the content, wording and graphics of an email. If the Company sends emails on the Customer's behalf, the content of those emails shall be the Customer's responsibility.
- 3.44 The Company shall have no responsibility or liability for the storage or back-up of the Customer's data and the Customer shall have full responsibility to make its own back-up of such data if required.
- 3.45 The Customer must comply with all applicable data protection and communications legislation (including without limitation, if located in the European Economic Area "EEA", any locally applicable legislation giving effect to EC Directive 95/46/EC and EC Directive 2002/58/EC such as the provisions of the GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003). In particular, the Customer shall:
- (a) if located or operating in the EEA, ensure that it is appropriately registered;
  - (b) take appropriate organisational and technical measures against unauthorised or unlawful processing;

- (c) obtain appropriate express, specific and informed consent when obtaining the personal data from data subjects;
- (d) keep full records of its customers opt-in/opt-out choices regarding unsolicited emails;
- (e) if located or operating in the EEA, only transfer personal data outside the EEA with, and only to the extent of, any express and informed written consent of the relevant data subject; and
- (f) permit the Company to audit its compliance with this clause 3.45 and shall provide access to all its premises and systems for such purpose upon being given reasonable notice.

- 3.46 The Customer shall fully indemnify and keep indemnified the Company against any losses, claims, fines, damage or expenses (including reasonable legal and professional expenses) (whether direct, indirect or consequential) arising as a result of or in connection with any breach of clause 3.45 above and/or any applicable data protection legislation.
- 3.47 All marketing communications in the UK are governed by the Committee of Advertising Practice (CAP) Code which is enforced by the Advertising Standards Authority. The general principles of this code are that the content of any marketing email should be legal, decent, honest and truthful, prepared with a sense of responsibility to consumers and society and in line with the principles of fair competition.
- 3.48 Certain specific sections of the code which are relevant to email marketing include:
- (a) marketers, publishers and owners of other media should ensure that marketing communications are designed and presented in such a way that it is clear that they are marketing communications. Unsolicited e-mail

marketing communications should be clearly identifiable as marketing communications without the need to open them;

- (b) email marketing communications should contain the full name and a valid address (e.g. an email address) of the marketers to which recipients can send opt-out requests;
- (c) before distributing or submitting a marketing communication for publication, marketers must hold documentary evidence to prove all claims, whether direct or implied, that are capable of objective substantiation. The adequacy of evidence will be judged on whether it supports both the detailed claims and the overall impression created by the marketing communication;
- (d) marketing communications should contain nothing that is likely to cause serious or widespread offence. Particular care should be taken to avoid causing offence on the grounds of race, religion, sex, sexual orientation or disability. Compliance with the Code will be judged on the context, medium, audience, product and prevailing standards of decency; and
- (e) email marketing communications should contain the full business name, registered office and Company registration number of the sender and must provide a valid mechanism for the recipients request to be unsubscribed.

3.49 The Customer agrees to follow the CAP code in all marketing communications and that the reputation, goodwill and brand of the Company are fully preserved and protected and the Customer shall not:

- (a) use the Services in any way so as to bring the Services or the Company into disrepute; or
- (b) use the Services to send unsolicited or unauthorised advertising, promotional material, 'junk mail', 'spam', 'chain letters or pyramid schemes, offensive adult services, pornographic material, pornographic

images, communications promoting email address data lists or any other form of solicitation to any data subjects or third party; or

- (c) forge headers or otherwise manipulate identifiers in order to disguise the origin of any content or materials transmitted by means of the Services;
- (d) use the Services in a manner which is unlawful, harmful, threatening, abusive, harassing, tortuous, indecent, obscene, libellous, menacing or invasive of another person's privacy;
- (e) use the Services in a manner which infringes the Intellectual Property Rights or proprietary or personal rights of any third party, including data subjects.

3.50 The Company monitors the content of emails created by the Customer and may at its discretion suspend the Services if it believes that the customer is in breach of clause 3.49.

3.51 The Customer agrees:

- (a) to comply, and to ensure that its use of the Services complies, in all respects, with all applicable legislation, regulations, directions, codes of practice, best practice guides (including, without limitation, the DMA best practice guides, The Committee of Advertising Practice Code and the Spamhaus best practice guides) and other rules and guidelines, mandatory or otherwise, promulgated from time to time by governments, regulators and/or email user groups acknowledged both UK and worldwide (collectively, Codes);
- (b) that where the Company is notified that a Customer is or has been in breach of any Codes, the Company shall be entitled to act on any request or recommendation for access to be barred to such Services and for such periods in each case as are reasonable;

- (c) to provide all reasonable assistance to the Company in connection with the Company's compliance with any requirements or conditions which are at any time imposed by law or any regulator or appropriate user group which are applicable to or affect the Services;
  - (d) to provide, the Company, relevant authority, user group or regulator with such information or material relating to the Services or a future service as it may reasonably request in order to carry out any investigation in connection with the Services; and
  - (e) to provide, the Company, relevant authority, user group or regulator with such information or material relating to the Services or a future service as it may reasonably request in order to carry out any investigation in connection with the Services.
- 3.52 In the event of any breach of applicable legislation, regulations, directions, codes of practice, best practice guides and other rules and guidelines, the Company will review the circumstances leading to the breach and may in its absolute discretion (taking account of the clients track record of using the services) either terminate the Contract or deactivate the Services, subject to the Customer providing documentary evidence that the breach was caused inadvertently and while acting in good faith and that appropriate steps have been taken to prevent any further reoccurrences.
- 3.53 The Company does not accept and shall have no responsibility or liability for the content of any emails sent using the Services, or for sending them to the recipients in accordance with these Conditions and the Customer agrees to indemnify fully and keep indemnified the Company against any losses, claims, fines, damages and expenses (including reasonable legal and professional expenses) of whatsoever nature (whether direct, indirect or consequential) arising as a result of or in connection with any breach by the Customer of clause 3.52 above and/or any applicable legislation.
- 3.54 The email marketing services shall be provided for such minimum period and may only be terminated upon such notice period as may be stipulated by the Company, subject to earlier termination under clause 12.
- Where the Company is to provide copywriting services to the Customer:
- 3.55 The parties shall agree a detailed specification with respect to any copywriting services to be undertaken by the Company. Any amendments proposed to the specification must be made in writing and delivered to the other party. If any such proposed amendments will incur additional costs, charges or expenses, then these must be met by the Customer.
- 3.56 As and between the Company and the Customer, all Intellectual Property Rights in the copy will be licensed to the Customer upon receipt of full payment from the Customer.
- 3.57 The Customer shall be solely responsible for arranging for legal and compliance clearance of the copy prior to making any use of the copy. Should it subsequently transpire that the copy is subject to any usage restrictions or limitations, the Customer shall permit the Company to remove and/or replace the offending copy without hindrance or liability to the Customer and any corresponding additional costs, charges or expenses shall be for the Customer's sole account. The Company shall in no way be held responsible for any such copy being included. The Customer shall fully indemnify and hold the Company harmless against any and all claims resulting from the Customer not having obtained all required legal clearances.
- 3.58 On completion of the project, the Company will require the final proof to be accepted by the Customer.
- 3.59 The acceptance procedure shall be as follows:
- (a) when the Company considers the work to be completed, the Customer will receive notification by telephone or email;

(b) the Customer will have seven days from the notification to carry out an appraisal of the work and inform the Company of any changes required to correct any errors;

(c) the Company will carry out the agreed amendments within fourteen days. The Customer will then have a further seven days to appraise the changes to the work and inform the Company of any errors in the changes;

(d) after this period, the work is considered as accepted and any additional amendments will be chargeable.

3.60 On the termination of the Contract, any copy delivered to the Customer but not yet fully paid for by the Customer shall be returned to the Company and the Customer shall not retain any duplicates of the copy.

Where the Company is to provide website hosting services to the Customer:

3.61 Use of hosting resources by the Customer is subject to such use being reasonable; any excessive use (as determined by the Company) will be deemed to be in breach of these Conditions.

3.62 The Company may determine that a Customer is using server resources to such an extent that the Customer risks jeopardizing server performance and resources for other customers. In any such instance, the Company reserves the right to suspend the Website immediately, or continue to host the Website but require the Customer to pay an additional fee.

3.63 The Company shall use all reasonable endeavours to respond to the Customer's notification of interruptions or other problems and to rectify any problems with reasonable diligence. The Customer should note that website maintenance will be limited to the number of hours agreed in the selected website hosting package. If problems arise that require additional development time outside of the agreed maintenance hours this development will be charged at the Company's standard hourly rates.

3.64 The Company will not guarantee or be liable for any breaks in the continuity of the electricity supply or of the telecoms link to the server that is provided by a third party.

3.65 If service is suspended or interrupted the Company shall use all reasonable endeavours to restore service with minimum delay, but the Company will not be liable for any lost, corrupted or destroyed data as a result of any suspension or interruption.

3.66 The Company accepts no responsibility for server downtime or interruptions to service caused by circumstances beyond the Company's control.

3.67 The Customer undertakes that the Website shall not be used directly or indirectly for any unlawful purpose. Unlawful purposes are deemed to include but are not limited to:

(a) civil and criminal offences of copyright and trademark infringement;

(b) transmission or display or posting of indecent, obscene or pornographic material;

(c) commission of any criminal offence (including deliberate transmission of computer viruses) under the Computer Misuse Act 1990 or similar legislation in any country;

(d) any transmission or display or posting of any material which is defamatory, offensive, or is of an abusive or menacing character;

(e) use of the Website in any manner which is a violation or infringement of the rights of any individual, firm or company within the United Kingdom and elsewhere which, for the avoidance of doubt shall include but not be limited to the use of any materials, photographs and/or images without obtaining the prior consent of any relevant third party;

- (f) the use of the Website for purposes generally deemed to be unacceptable, including spamming, hacking, phreaking, password cracking, pirated software, ROMS, emulators, or IP spoofing or providing "links" or "how to" information to such material.
- 3.68 The Customer will indemnify the Company against all and any losses and costs that the Company may incur as a result of any breach of clause 3.67 above.
- 3.69 The Customer will ensure that that the Website complies with the laws, regulations and requirements of any country from which it can be accessed.
- 3.70 If the Company has reasonable grounds for believing that there has been or that there may be a breach of these Conditions, the Company reserves the right to monitor any and all communications passing through the server.
- 3.71 If the Website is used for any unlawful use the Company may suspend or terminate service immediately and at the same time as suspension or termination occurs, the Company shall notify the Customer. Where suspension or termination occurs, the Company reserves the right to delete all of the Customer's files (including web pages) without prior notice.
- 3.72 The Company will advise the Customer on selecting domain names but cannot guarantee a certain name will be available. The Customer will be bound by the standard terms of the naming authority. The Company gives no warranty that any domain name will not infringe the Intellectual Property Rights of any third party. Renewals are the sole responsibility of the Customer and accordingly the Company accepts no responsibility if a domain fails to be re-registered. The Company reserves the right to levy a charge for any administrative work associated with subsequent hosting or domain name transfers.
- 3.73 The Company reserves the right to feature the Website in future promotions without seeking prior consent.
- 3.74 The Customer grants the Company a non-exclusive licence to use the Website to the extent required for the Company to perform its obligations and exercise its rights under the Contract.
- 3.75 The Company may discontinue the website hosting services without liability to the Customer if the Company's authority to provide the website hosting services should cease or be suspended.
- 3.76 The website hosting services shall be provided for such minimum period and may only be terminated upon such notice period as may be stipulated by the Company, subject to earlier termination under clause 12.
- Where the Company is to provide video production services to the Customer:
- 3.77 Any changes or additions to the Services (including without limitation, any change to the format agreed for provision of the Output Material, or any additional days' shooting, will be charged at the Company's applicable rates).
- 3.78 Any indication given by the Company as to production timescales shall be deemed to be an estimate; whilst the Company will use reasonable efforts to meet any deadline notified to it by the Customer, the Company shall not be liable for any delay in performing the Services, even where such delay is caused by the Company's negligence.
- 3.79 The equipment used during production will be at the discretion of the senior member of the Company's crew. In the unlikely event that the Company experiences equipment failure or difficulties, the Company will use reasonable efforts to procure suitable replacement equipment as soon as possible.
- 3.80 The Company reserves the right to change any production time or date to a more suitable time or date in the event that production is likely to be adversely affected by inclement weather conditions, since the welfare of the Company's equipment and personnel is paramount.

- 3.81 The Company reserves the right to remove, at the Customer's cost, any of the Company's personnel and/or equipment from a location if the Company reasonably deems the said location to be unsafe, or if said personnel are subjected to abusive or aggressive behaviour.
- 3.82 If the Customer cancels the production or any part thereof the charges payable to the Company for the production shall (to the extent that they have not already been paid) remain fully payable and shall become immediately payable by the Customer.
- 3.83 In the event of production being delayed, postponed or aborted due to the fault of the Customer or anything occasioned by the Customer, then the Customer shall be solely responsible for any resulting or associated costs, charges and expenses, together with the additional costs, charges and expenses of undertaking any work at a different time or undertaking any further work for the Customer. If production is permanently aborted pursuant to this clause 3.83, then all charges referred to in clause 3.84 shall also become immediately payable, to the extent that they have not already been paid.
- 3.84 The Customer must give the Company at least two weeks' written notice if the Customer wishes to change any production date; otherwise, the Customer will be solely liable for any costs, charges and expenses arising from having to change the agreed production date and from shooting on a different date.
- 3.85 If production locations are to be organised by the Customer, it is the Customer's responsibility to ensure that the Company has clear and unencumbered access to all relevant parts of any location required to undertake the work, since any costs incurred due to the Company's access being obstructed shall be for the sole account of the Customer.
- 3.86 Copyright must first be obtained from the original copyright owner before any Input Material may be included in the production. Copyright in the Input Material must be explicitly transferred to the Company without charge. The Company reserves the right to use any and all Input Material included in the production (in full or in part) for promotional purposes.
- 3.87 The Company shall not be required by the Customer to produce anything which, in the Company's reasonable opinion, would constitute an infringement of any Intellectual Property Rights, or which is or may be of an illegal, scandalous, obscene or libellous nature.
- 3.88 The Company recommends that the Customer uses and enforces Waivers and/or Performers' Release Forms at all times. No liability will be accepted by the Company if the production must be re-edited due to a subject refusing permission to show their image in whatever form.
- 3.89 The Company reserves the right to withhold delivery and transfer of ownership of the Output Material if any charges payable to the Company have not been paid in full. Any grant of any license or transfer of copyright ownership agreed by the Company under these Conditions is expressly subject to the timely payment of all charges payable to the Company.
- 3.90 A first cut of the production will be forwarded to the Customer for its review. This first cut may receive one set of revisions only; those revisions are included in the charges. Any subsequent revisions thereafter will be charged at the Company's daily rates.
- Where the Company is to provide content marketing services to the Customer:
- 3.91 The Company will assist the Customer in building a qualified audience through the use of content activities by putting in place content marketing initiatives across designated platforms and formats to drive engagement, leads and positive customer behaviour.

3.92 The Customer shall:

- (a) provide the Company with such information as may reasonably be requested regarding the Customer's marketing strategy, marketing goals, metrics and analytics, creative guidelines, audience insights, themes and topics;
- (b) provide all reasonable assistance to the Company with respect to the tasks, workflows and processes that are critical to the success of the content marketing activity;
- (c) ensure that it puts suitably skilled people in place to deliver the tasks it has agreed to perform;
- (d) set clear goals, tasks, responsibilities and deadlines for each person contributing the content creation and delivery;
- (e) commit to a schedule by which each individual's tasks are fulfilled (editorial calendar/publication schedule); and
- (f) meet all deadlines to enable the Company to deliver all content activities by providing timely feedback, copy edits, minor changes and adjustments to content in accordance with any timetable notified to the Customer (and any failure by the Customer to comply with the provisions of this sub clause (f) could cause the Company to incur additional costs, for which the Company may invoice the Customer).

3.93 The content marketing services shall be provided for such minimum period and may only be terminated upon such notice period as may be stipulated by the Company, subject to earlier termination under clause 12.

Where the Company is to provide social media management services to the Customer:

- 3.94 The Company will complete an initial set up of the campaign based around the social media accounts in the Customer's chosen package. Where required, designs which complement the Website style and company branding will be produced for the Customer's approval.
- 3.95 Once the initial set up has been approved by the Customer where agreed, social media accounts will be set up for each of the Customer's social media pages and login details will be sent to the Customer once the pages have been built and completed.
- 3.96 The Company will ensure that the Customer's content is optimised and syndicated to search engines. The Customer may supply blog content to the Company in a word or Google Docs document; the Company will optimise and upload the blog content, and additionally distribute the blog to social media and social bookmarking properties and portals. The Customer should also supply the Company with the latest news, new products, promotions and anything else that the Customer considers should be published. If the Customer is unable to provide the content on a timely regular basis, the Company can offer a paid copywriting service.
- 3.97 Google Analytics may need to be added to the Website if not already set up and social media tracking will be added to the account to enable full tracking from the social media distribution. This is separately chargeable unless otherwise agreed.
- 3.98 The Customer where agreed must provide the Company with full FTP access to the Website. Removal of or restriction of access may relieve the Company of its obligations under the Contract; or, in the event that the Customer cannot or will not provide the Company with Full FTP access, the Company will provide the Customer with instructions on how to populate the Customer's conversion tracking on the Website.

- 3.99 The Company will integrate the accounts into the Website, where necessary.
- 3.100 If the Customer wishes the Company to market new products and services, setting up this element of the campaign may attract an additional set-up fee.
- 3.101 From time to time, the Company may recommend changes to the Website to improve the conversion rate, the bounce rate or the effectiveness of the campaign; the Company will always quote the Customer for any additional work and will only proceed with the Customer's approval.
- 3.102 The social media management services shall be provided for such minimum period and may only be terminated upon such notice period as may be stipulated by the Company, subject to earlier termination under clause 12.

## 4. PRICE

- 4.1 Prices for the Services, howsoever given, are based on conditions ruling on the date of their giving and are subject to change. The price for the Services shall be calculated on a fixed-fee basis or on a time and materials basis. The effective or estimated price for the Services shall be the price confirmed by the Company in its written notification of acceptance of the Customer's order pursuant to clause 2.3. Where the Services are subject to a minimum period, the price of such Services may be increased at the end of the minimum period and at predetermined intervals thereafter.
- 4.2 The Company reserves the right, by giving notice to the Customer at any time before provision of the Services, to increase the price of the Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, any increase in the costs of labour, materials or other costs of production), any change in delivery dates, quantities or

specifications for the Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate, accurate or complete information or instructions.

- 4.3 Unless otherwise stated, the price quoted will be exclusive of Value Added Tax which will be charged at the rate which is applicable at the date of commencement of performance of the Services.
- 4.4 Unless otherwise stated in the Company's proposal, the price of the Services excludes any disbursements incurred (including but not limited to travel, photography, stock imagery, courier and other reasonable costs, charges and expenses) which will be separately charged to the Customer.
- 4.5 The Company shall not be liable to the Customer if for any reason the Company shall have failed to provide the Services in full, provided that the Company shall have used its reasonable endeavours to rectify any such failure and the Customer shall remain liable to pay all of the charges for the Services to the Company notwithstanding any such failure.
- 4.6 Any waiver or reduction of any price will only be applicable if agreed by the Company in writing.

## 5. PERFORMANCE

- 5.1 Whilst the Company will endeavour to provide the Services in accordance with the Customer's requirements, the Company will not be liable for any consequences of any delay in the provision of the Services, howsoever caused. Time shall not be of the essence for performance of the Services.
- 5.2 Unless otherwise agreed in writing by the Company, the performance of the Services shall take place at the Company's place of business.

- 5.3 The Company may perform the Services in separate tranches. Each separate tranche shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.4 Each tranche shall be a separate contract.
- 5.5 No cancellation or termination of any one contract relating to a tranche shall entitle the Customer to repudiate or cancel any other contract or tranche.
- 5.6 The Customer shall not, without the prior written consent of the Company, whether acting on the Customer's own account, on behalf of, or with any other person (including any person which the Customer directs to act on its behalf), at any time from the date of first provision of the Services to the expiry of 6 months after the last date of supply of the Services, solicit or entice away from the Company or employ (or attempt to employ) or otherwise engage or attempt to engage the services of any person who is, or has been, engaged as an employee, consultant or subcontractor of the Company in the provision of the Services.
- 5.7 Any consent given by the Company in accordance with clause 5.6 shall be subject to the Customer paying to the Company a sum equivalent to 15 % of the then current annual remuneration of the Company's employee, consultant or subcontractor.
- 5.8 Certain Services are indicated in clause 3 as being subject to a minimum period. If the Company notifies the Customer that any Services (other than those identified in clause 3) are subject to a minimum period, then those Services shall be provided for such minimum period and may only be terminated upon such notice period as may be stipulated by the Company, subject to earlier termination under clause 12.

## **6. CONFIDENTIAL INFORMATION, INTELLECTUAL PROPERTY RIGHTS AND DATA PROTECTION**

- 6.1 The Customer and the Company agree that in the course of the Company providing the Services to the Customer, the parties may disclose to each other certain Confidential Information. The Customer and the Company agree that each party will maintain the Confidential Information's confidentiality and not disseminate it to any third party without the disclosing party's prior written consent, save that this obligation shall not apply to any Confidential Information that either party has a duty (whether legal or otherwise) to communicate or that is in the public domain or is already in the receiving party's possession through no fault of the receiving party. Neither party shall use any Confidential Information for any purpose other than the discharge of its respective obligations under the Contract.
- 6.2 The Customer acknowledges the Company's ownership of any and all Intellectual Property Rights in any Deliverables and any Output Material and in any Services provided to the Customer pursuant to the Contract and agrees not to contest the Company's ownership or use of any such Intellectual Property Rights. Subject to any rights granted to the Customer in relation to any of the Services detailed in clause 3, the Customer shall not acquire any such Intellectual Property Rights or any licence or grant of rights therein. The Customer further acknowledges that, without limitation, any and all Intellectual Property Rights developed by the Company in performing any Services shall become vested and shall vest in the Company absolutely and shall also be subject to the other provisions of this clause 6.2.
- 6.3 Without limiting the generality of clause 6.2, any and all proprietary code developed by the Company which is related to the development of the Website (including bespoke content management systems, data room engines and functionality and bespoke functionality programming) shall vest in and shall remain the sole and exclusive property of the Company. Any

such proprietary code is specifically designed to be run from the Company's recommended hosting service and as such shall be non-transferable to any third party hosting service provider (other than in accordance with the requirements of clause 2.1), in order to preserve the Company's Intellectual Property Rights in said proprietary code.

- 6.4 For the purposes of this agreement Data Protection Laws means any applicable law relating to the processing of Personal Data, as applicable to either party or the Services, including:
- a.i. the Directive 95/46/EC (Data Protection Directive) or the GDPR;
  - a.ii. any laws which implement such laws;
  - a.iii. any laws that replace, extend, re-enact, consolidate or amend any of the laws stated in (i) and (ii) above;
  - a.iv. all guidance, codes of practice and codes of conduct issued by any relevant Data Protection Supervisory Authority relating to such Data Protection Laws (whether legally binding or not).
- b. GDPR means the General Data Protection Regulation (EU) 2016/679;
- c. Protected Data means Personal Data received from or on behalf of the Customer, or obtained in connection with the performance of the Company's obligations under the Agreement; and
- d. Sub-processor means any agent, subcontractor or any other third party engaged by the Company (or by any other Sub-Processor) for carrying out any processing activities in respect of the Protected Data.

The terms "Controller", "Data Subject", "International Organisation", "Member State", "Personal Data", "Personal Data Breach", "Processor", "Processing" and "Supervisory Authority" shall have the same meaning as in the GDPR.

#### Compliance with data protection laws

- 6.5 The parties agree that the Customer is a Controller and the Company is a Processor for the processing of Protected Data pursuant to this Agreement.
- 6.6 The Company shall, and shall ensure its Sub-Processors and each of the Company personnel shall comply with all Data Protection Laws in connection with the processing of Protected Data and the provision of the Services.
- 6.7 Each party shall be liable for and shall indemnify (and keep indemnified) the other against all actions, proceedings, liabilities, costs, claims, losses, expenses, compensation paid to Data Subjects and other reasonable professional costs and expenses suffered or incurred by the indemnified party arising out of or in connection with any breach of the the Data Protection Laws by the indemnifying party, its employees or agents.
- 6.8 The Company shall only process (and shall ensure Company personnel only process) the Protected Data in accordance with its contractual obligations in the delivery of services and the Customer's written instructions. The Company will immediately inform the Customer if any instruction relating to the Protected Data infringes or may infringe any Data Protection Law.
- 6.9 The Company shall implement appropriate technical and organisational measures to protect the Protected Data from accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access.
- 6.10 The Company will not permit any processing of Protected Data by any third party (except Company personnel that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior specific written permission of the Customer, except (i) as specifically stated in this agreement, or (ii) where such processing is required by any applicable law, regulation or public authority.

- 6.11 The Company shall prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written agreement containing data protection obligations that provide at least the same level of protection for Protected Data as those in this Schedule.
- 6.12 The Company shall remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-Processor and each of the Company Personnel as if they were its own.
- 6.13 Where a Sub-processor is engaged by the Company, the Company shall:
- a. carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Protected Data required by this Schedule;
  - b. remain liable for any breach of this Schedule caused by a Sub-processor; and
  - c. provide relevant details and a copy of each agreement with a Sub-Processor to the Customer on request.
- 6.14 The Company shall, taking into account the nature of the processing, provide reasonable assistance to the Customer insofar as this is possible, to enable the Customer to respond to requests from a data subject seeking to exercise their rights under Data Protection Laws. In the event that such request is made directly to the Company, the Company shall promptly inform the Customer of the same.
- 6.15 The Company shall to the extent required by Data Protection Laws, taking into account the nature of the processing and the information available to the Company, provide the Customer with commercially reasonable assistance with data protection impact assessments (as such term is defined in Data

Protection Laws) or prior consultations with data protection authorities that the Customer is required to carry out under Data Protection Laws.

- 6.16 The Company will record and refer all requests and communications received from Data Subjects or any Supervisory Authority to the Customer which relate (or which may relate) to any Protected Data promptly (and in any event within three days of receipt) and will not respond to any without the Customer's express written approval and strictly in accordance with the Customer's instructions unless and to the extent required by law.

#### **International transfers**

- 6.17 The Company will not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the EEA or to any International Organisation without the prior written consent of the Customer.
- 6.18 The Company will, in accordance with Data Protection Laws, make available to the Customer such information in the Company's possession or control as the Customer may reasonably request with a view to demonstrating the Company's compliance with the obligations of data processors under Data Protection Laws in relation to its processing of Protected Data.
- 6.19 The Company shall promptly (and in any event within 24 hours) notify the Customer if it (or any of its Sub-Processors or the Company Personnel) suspects or becomes aware of any suspected, actual or threatened occurrence of any Personal Data Breach in respect of any Protected Data.
- 6.20 Upon termination or expiry of the Agreement, the Company shall at the Customer's election, promptly (and in any event, within 30 days of the expiry of the Agreement) delete or return to the Customer the Protected Data (including existing copies) in the Company's possession by secure file transfer, save to the extent that the Company is required by any applicable law to retain some or all of the Protected Data.

- 6.22 The Company will process subject-matter data in relation to the Company's provision of the Services and any related technical support to Customer.
- 6.23 The Company will process data for a term whilst this agreement is in force plus the period from expiry of the term until return/deletion of all Protected Data by the Company.

## 7. PAYMENT

- 7.1 Subject only to any special terms agreed in writing between the Company and the Customer, the Company shall be entitled to invoice the Customer for the price of the Services on or at any time after acceptance of the Customer's order.
- 7.2 Provided that the Customer has produced references which in the Company's opinion are satisfactory, then settlement terms will be net 30 days from the invoice date. In all other cases payments shall be made in advance upon submission by the Company of a pro-forma invoice. All and any deposits, retainers, stage payments and milestone payments shall be paid at such times and in such manners and amounts as may be stipulated by the Company and all such payments shall be non-refundable.
- 7.3 The time of payment of the price shall be of the essence of the Contract.
- 7.4 All payments shall be made in cleared funds without any deduction, withholding or set-off.
- 7.5 Failure by the Customer to pay any invoice by its due date shall entitle the Company to:

- (a) at its option, to charge interest at the rate of five percent (5%) per annum above Lloyds TSB Bank plc's base lending rate from time to time calculated on a daily basis (whether before or after any judgment) until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest);
- (b) charge the Customer with any costs incurred by the Company in the course of collecting outstanding monies due to the Company from the Customer;
- (c) suspend any warranty for the Services or any other services supplied by the Company to the Customer, whether or not they have been paid for;
- (d) appropriate any payment made by the Customer to such of the Services as the Company may think fit;
- (e) set off any amount owed by the Company to the Customer against any amount owed by the Customer to the Company on any account whatsoever;
- (f) terminate the Contract, or suspend or cancel any future performance of Services; and
- (g) cancel any discount (if any) offered to the Customer.
- 7.6 The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

## 8. FORCE MAJEURE

The Company reserves the right to defer the date of provision of the Services, or to cancel the Contract or reduce the volume of the Services ordered by the Customer (without liability to the Customer) if it is prevented from, or delayed in, the carrying on of its business (wholly or in part) due to circumstances beyond the reasonable control of the Company including, without limitation, Acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers, or any inability or delay in obtaining supplies of adequate or suitable materials, or the failure or demise of any source of supply.

## 9. WARRANTY

- 9.1 The Company warrants (subject to the other provisions of these Conditions) that the Services will be performed with reasonable skill and care.
- 9.2 The Company's liability pursuant to clause 9.1 shall be limited to re-performing those Services found not to have been performed with reasonable skill and care and notified to the Company within the period set forth in clause 9.3.
- 9.3 Any deficiency in the performance of the Services shall be notified to the Company within 7 days of completion of the performance of the Services; otherwise, the Services shall be deemed to be satisfactory and a charge will be made for additional rectification work.
- 9.4 The Company shall not be liable for any breach of any warranty in clause 9.1, if:

- (a) the deficiency arises from any Input Material, instructions, specification or design supplied by the Customer, or from any other cause which is not due to the neglect or default of the Company;
- (b) the full price for the Services has not been paid by the time for payment stipulated in clause 7.2; or
- (c) the deficiency is of a type specifically excluded by the Company by notice in writing.

- 9.5 If upon investigation, the Company reasonably determines that any deficiency in the Services is a result of, or is excused by, any of the matters referred to in clause 9.4, the Customer shall be liable for all costs reasonably incurred by the Company in investigating the same and determining the cause.

## 10. EXCLUSION OF LIABILITY AND INDEMNITY

- 10.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these Conditions;
  - (b) any use made by the Customer of any of the Services; and
  - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 2 of the Supply of Goods and Services Act 1982 ) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

10.4 Subject to clause 10.2 and clause 10.3:

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) the Company shall not be liable to the Customer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.5 The Customer shall hold the Company harmless and keep the Company fully and promptly indemnified against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense whatsoever, howsoever and to whomsoever occurring, to the extent that such liability, loss, damage, injury, cost or expense arises directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of

its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.

## 11. CHANGES

The Company reserves the right without prior approval from or notice to the Customer to make any changes in the specification of the Services which are required to conform to any applicable statutory or regulatory requirements or which, in the reasonable opinion of the Company, do not materially affect the specification of the Services.

## 12. TERMINATION

- 12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:
- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
  - (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach; or
  - (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
  - (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
  - (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
  - (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
  - (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
  - (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
  - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 12.1(d) 12.1(j) (inclusive); or
  - (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
  - (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).
- 12.2 On termination or expiration of the Contract for any reason:
- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of any Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; and
  - (b) the accrued rights and liabilities of the parties as at termination or expiration and the continuation of any provision expressly stated to survive or implicitly surviving termination or expiration, shall not be affected.

### 13. GENERAL

- 13.1 No forbearance or indulgence granted by the Company to the Customer shall in any way limit the rights of the Company under these Conditions.
- 13.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business.
- 13.3 Neither the Company nor the Customer intends that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 13.5 The Company shall be entitled at its discretion to perform all or any of its obligations under the Contract by using subcontractors and may at any time assign or transfer all or any of its rights under the Contract.
- 13.6 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 13.7 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society whose decision as to the type, qualifications and experience of such arbitrator shall be final and binding on the parties.
- 13.8 The costs of the arbitrator shall be borne by the parties as he directs and his decision on the issue in dispute shall be final.
- 13.9 The Contract shall be subject to and construed under English Law and the parties hereby submit to the exclusive jurisdiction of the English courts for that purpose.