

Dreamscape Solutions Limited

Terms and Conditions

1. Definitions

1.1 In these Terms and Conditions:-

'The Customer' shall mean the person, firm or company who accepts an estimate of the Supplier or whose order of Services is accepted by the Supplier (also 'you', 'your'). 'Customer's Material' means all materials supplied by the Customer for the provision of the Services and shall include all materials and information subsequently provided by the Customer to be incorporated into the Service and/or the Customer's Web Site pursuant to the contract. 'Customer's Web Site' means the Web Site of the Customer, at the URL address set out in the Service Agreement or as otherwise advised by the Supplier, which is designed by and/or hosted through the Supplier pursuant to the contract. 'Deposit' means the sum equivalent to 40% of the sum quoted in the Supplier's estimate or quotation. 'Document' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data'. 'Domain Name' means the domain name(s) chosen by the Customer as set out in the Service Agreement. 'Offending Material' means any material, data, images or information which is: in breach of any law, regulation, code or practice or acceptable use policy; or abusive, indecent, defamatory, obscene or menacing or otherwise offensive; or in breach of confidence, copyright or other intellectual property rights, privacy or any other right of any third party. 'Output Material' means any Documents or other materials, and any data or other information provided by the Supplier relating to the

Services

'Registry' means the relevant registry or naming authority responsible for the registration of domain names which includes (without limitation) Nominet UK and Network Solutions Inc. 'Service Agreement' means the form signed by an authorised person of the Customer confirming and accepting the Services. 'The Services' shall mean the service provided by the Supplier which the Customer elects as confirmed in the Service Agreement which includes (without limitation) Graphic Design work, Web Site Design work and/or hosting, multimedia work, etc. 'Specification' means the specifications relating to the provision of the Services and/or the design of the Customer's Web Site. 'The Supplier' shall mean Dreamscape Solutions Limited (Co. Regn. No. 05834564) whose registered office is at Office E3, Centre Buildings, Carrington Business Park, Manchester Road, Carrington, Manchester, Lancashire M31 4DD and including any future premises (also 'we', 'us', 'our' or 'its').

1.2 Words denoting the masculine gender include the feminine and neuter and vice versa and words denoting the singular include the plural and vice versa.

1.3 The headings in these terms and conditions are for convenience only and shall not affect their interpretation.

1.4 Reference to any statute or statutory provision includes reference to the statute or statutory provision as from time to time amended, extended or re-enacted.

2. Basis of Contract

2.1 The Supplier shall provide the Services pursuant to these Conditions. These Conditions constitute the entire agreement between the Supplier and the Customer. No conditions or terms stipulated in any other communication or document shall vary or annul any of these conditions except if they were expressly consented to in writing by the Supplier. All employees or agents of the Supplier are not authorised to make any representations concerning the Services unless confirmed in writing. In entering into the contract the Customer acknowledges that it does not rely on, and waives any claim of breach of, any such representations which are not so confirmed. We reserve the right to vary the specification of all Services at any time, withdraw, modify or amend any Service without prior notice.

2.2 Any typographical, clerical or other error or omission in any sales literature including web site, estimate, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.3 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing by the Supplier and on terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and goods used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

2.4 Subject only to Clause 4, the Supplier is not responsible for any material, data, images or information transmitted, used, communicated, passed over or received, through or on the Service. In particular, the Supplier does not warrant the quality or accuracy of such material, data, images or information and is not liable if they contain any Offending Material. The Customer's use of such material, data, images or information is solely at the Customer's own risk and is subject to all applicable laws, regulations, codes of practice and acceptable use policies.

3. Domain Names

This Clause 3 shall only be applicable where the Service includes the registration of domain names on behalf of the Customer.

3.1 The Supplier does not represent that the Domain Name is capable of being registered or that it will be registered. The Customer should not assume registration of the Domain Name until the Customer has been notified in writing that it has been registered. Any action taken by the Customer before such notification is at the Customer's risk.

3.2 The registration and use of the Domain Name is subject to the terms and conditions issued by the Registry from time to time. The Customer will be legally bound by them. It is the Customer's sole responsibility to get a copy of such terms and conditions and the Customer must read, understand and comply with them.

3.3 The Customer will have no claim against the Supplier if the Registry refuses to register the Domain Name or suspend or cancel it for any reason.

3.4 The Supplier is not responsible nor liable for the Customer's use of the Domain Name. If there is any dispute raised by any other party, the Customer shall be solely responsible for resolving such dispute with such party. In such event, the Supplier may without giving any notice withhold and suspend the Domain Name without any liability to the Customer.

3.5 The Supplier does not warrant that the Domain Name is or will continue to be available for the Customer's use or that no other domain name is or will be registered which conflicts with the Domain Name or which otherwise affects the use of the Domain Name.

4. Web Site Design

This Clause 4 shall only be applicable where the Service includes Web Site design and/or maintenance.

4.1 The Supplier will design the Customer's Web Site in accordance with the Specification.

4.2 The Supplier and the Customer will in good faith discuss the development and design of the Customer's Web Site within the parameters of the Specification. If there is any dispute, the Supplier's views shall prevail.

4.3 The Supplier may request the Customer to supply the Supplier with the Customer's Materials as the Supplier deems necessary. The Customer shall promptly give its full co-operation in providing such materials.

4.4 The Supplier may (but is not obliged to) incorporate the Customer's Material or any part of it into the Customer's Web Site.

4.5 The Supplier warrants that nothing in the Customer's Material contains any Offending Material.

4.6 If the Customer wishes to change the Specification or requests the Supplier to make substantial changes to the Customer's Web Site:

4.6.1 the Customer will give the Supplier at least fourteen (14) days' written notice; and

4.6.2 the Supplier may at its discretion charge such additional fee as it deems fit.

Any such changes shall be subject to the Supplier's written agreement.

4.7 The Customer may, within fourteen (14) days from the date the Customer's Web Site goes live on the Internet, request the Supplier in writing to make any minor changes to the Customer's Web Site design within the parameters of the Specification. The Supplier shall at its sole discretion decide whether the changes so requested are minor. The Customer shall be deemed to have approved the Customer's Web Site design upon the expiry of such fourteen (14) day period.

4.8 The Customer shall at its own expense supply the Supplier with the Customer's Material within sufficient time to enable the Supplier to provide the Services and the Customer shall ensure the accuracy of the Customer's Material.

4.9 The Customer shall at its own expense retain duplicate copies of all of the Customer's Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.

5. Intellectual Property Rights

5.1 The intellectual property rights of the Supplier to be identified as the originators of all supplied Services will be asserted by the Supplier in accordance with the Copyright, Design and Patents Act 1988. All trademarks, service marks, and trade names are proprietary to the Supplier. No part of any Services supplied may be modified, upgraded, reproduced, republished, transmitted or distributed in any form or by any means electronic or mechanical, including downloading, copying, capturing screen-shots, printing, photocopying, borrowing, hiring, lending, recording, public performance, broadcasting or by any information storage and retrieval system, now known or hereafter invented, without express written permission from the Supplier. Modification of the Services or use of the Services for any other purpose is a violation of the Supplier's copyright and other proprietary rights. For purposes of this contract, the use of any such material on any other networked computer environment is prohibited.

5.2 All intellectual property rights in the Customer's Material shall remain and vest in the Customer. The Customer grants and warrants that it has the right to grant the Supplier a non-exclusive, non-transferable licence to use the Customer's Material in connection with the Services during the term of the contract.

5.3 Where Clause 4 applies and subject to Clause 5.2 all intellectual property rights in the Customer's Web Site designed by the Supplier shall remain and vest in the Supplier. The Supplier grants the Customer a non-exclusive, non-transferable licence to use such Web Site only for the purpose of the Services during the term of the contract.

6. Variations in Price and Time

- 6.1 All estimates and quotations given by the Supplier shall be in accordance with the current time costing given in respect of the Customer brief and are subject to amendment by the Supplier on or at any time after acceptance to, in writing, meet any rise or fall in such costs at any time prior to the date of despatch.
- 6.2 The Supplier shall be entitled to make a reasonable charge for the storage of any Customer's Material left with the Supplier before commencement of the Services or after notification of completion of the Services.
- 6.3 Prices are valid for 30 days from the estimate or quotation date.
- 6.4 All estimates and quotations given by the Supplier are subject to written confirmation at the time of acceptance upon receipt of the Customer's order and remittance. Acceptance and execution of orders is dependant upon the availability of Services and the absence of any circumstances beyond the Supplier's control which may hinder or prevent execution or acceptance.
- 6.5 If payment is to be made by instalments and if the Customer fails to pay any instalment on its due date then the Supplier shall be entitled to demand payment of the unpaid balance (including all arrears).
- 6.6 Unless otherwise specified the times or dates quoted are for completion of the Services at the Customer's specified address as set out in the estimate or quotation. A charge may be made to cover any extra costs involved in completion at a different address not specified on the Service Agreement.
- 6.7 Any times or dates given for the completion of the Services shall be estimated only and whilst the Supplier will use its best endeavours to meet such times or dates time shall not be of the essence of the contract and the Supplier shall not be liable for any failure to deliver or complete the work or any part thereof to time.

7. Deposit

- 7.1 Subject to any special terms agreed, the Customer shall pay to the Supplier the Deposit before the Supplier commences the Services contained in the Service Agreement.
- 7.2 Failure by the Customer to make payment of the Deposit will result in there being no contract for the provision of Services by the Supplier to the Customer.
8. Preliminary Work
- 8.1 All Services carried out, whether experimentally or otherwise, at the Customer's request will be charged unless prior written approval to vary these terms has been given by the Supplier.

9. Liability

9.1 It is the Customer's sole responsibility to comply with the provisions of any statutes (including any regulations or orders made thereunder) and any other obligations imposed by law (including byelaws) applicable to all the Services supplied. It is also the Customer's sole responsibility to obtain any and all necessary intellectual property rights, clearances, and/or other consents and authorisations in respect of the Services. If such cases arise and are taken to court, the Supplier will be indemnified by the Customer against any legal responsibility.

10. Indemnity

10.1 The Customer agrees to indemnify and keep indemnified and hold on demand harmless from and against any claim brought against the Supplier by a third party resulting from the provision of Services by us to you, including any loss or damage resulting in delay of Services to the Customer beyond our control and your use of the Services and in respect of all losses, costs, actions, proceedings, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered and howsoever incurred by us in consequence of your breach or non-observance of these terms and conditions.

11. Limitation of Liability

- 11.1 We hereby exclude all conditions, terms, representations (other than fraudulent representations) and warranties relating to the Services supplied or the inability to use the Services supplied under this contract (including, but not limited to, procurement of substitute services; loss of data, contracts, or profits or anticipated savings; or business interruption; or for any other indirect or consequential or economic loss whatsoever), whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose, even if the Supplier or an authorised representative of the Supplier has been advised of the possibility of such damages.
- 11.2 Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.
- 11.3 Our total aggregate liability to you for any claim in contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by you in respect of the Services which are the subject of any such claim and provided that you notify us of any such claim within a reasonable period.

12. Claims

- 12.1 In the event of error or omission the Customer will be entitled to a refund of such part (not exceeding the whole) of the charge for the Services concerned as is fair and reasonable having regard to the nature of the error or omission. Subject to Clause 10, the Supplier will not accept any liability in respect of errors or omissions resulting from its own negligence.
- 12.2 The Customer's Material, whether in the possession of the Supplier or in transit to or from the Supplier, shall be deemed to be at the Customer's risk and the Customer should insure accordingly.
- 12.3 If any of the Customer's Material appears unsuitable to the Supplier then the Supplier may charge the Customer for alternative materials found during the Services except that if the whole or any part of such additional cost could have been avoided but for unreasonable delay by the Supplier in ascertaining the unsuitability of the Customer's Materials then that amount shall not be charged to the Customer.
- 12.4 The quantities of the Customer's Material supplied shall be adequate to cover normal spoilage.

13. Delivery and Payment

- 13.1 The Services shall be accepted when tendered and thereupon or, if earlier, on notification that the Services have been completed, and payment shall become due. Normal terms of payment are remittance of order or by invoice in UK Sterling. The time and payment of invoices shall be of essence of the contract. Credit terms shall only be accepted after completion and acceptance of a credit account. The Supplier reserves the right to make credit checks and request payment in advance in certain circumstances.
- 13.2 Should the Services be suspended at the request of or delayed through any default of the Customer for a period of 30 days, the Supplier shall then be entitled to payment for the Services already carried out and other additional costs associated with the carrying out of said Services.
- 13.3 Any queries relating to an invoice must be raised as soon as reasonably possible and not exceeding 30 days after the date of the invoice otherwise it will be deemed to be approved and any Customer's query waived.
- 13.4 All charges payable by you to us for the Services are exclusive of Value Added Tax which shall be paid by you at the rate and in the manner for the time being prescribed by law and shall be due and payable immediately, or in the case of a credit account, within thirty (30) days of our invoice unless prior written approval to vary these terms has been given by the Supplier.
- 13.4 The provision by us of the Services is contingent upon our having received cleared funds payment in full from you in respect of the relevant Services. Without prejudice to our other rights and remedies under this agreement, if any sum payable is not paid on or before the due date, we reserve the right, forthwith and at our sole discretion, to suspend the provision of Services to you.
- 13.5 All goods remain the property of the Supplier until they are paid for in full. The Supplier reserves the right to repossess any goods, literature, manuals, which have been given to the Customer in connection with the Services that are not paid for within 30 days of the invoice date. Any adjustments will be paid less reasonable cost of recovery including work carried out and other additional costs.
- 13.6 The Supplier reserves the right to pass accounts not settled within the specified terms to solicitors or a bailiff for collection.
- 13.7 The Supplier reserves the right to charge interest on overdue accounts. Interest, where applicable, will be charged at 5% per annum over the base rate of Barclays Bank plc at the time the debt becomes due, or 12% per annum, whichever is greater, such interest to accrue from day to day.

14. Force Majeure

14.1 Though every effort will be made to carry out the contract the Supplier shall be under no liability if we shall be unable to carry out any provision of the contract for any reason beyond our control including (without limiting the foregoing) act of God, war, strike, lockout or any other labour dispute, fire, flood, drought, failure of power supply, legislation or other cause beyond the control of the Supplier. During the continuance of such a contingency the Customer may by written notice to the Supplier elect to terminate the contract and pay for Services rendered, but subject thereto shall otherwise accept delivery when available.

15. Termination

15.1 This clause applies if:

15.1.1 the Customer makes any voluntary arrangement with your creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 15.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
 15.1.3 the Customer ceases, or threatens to cease, to carry on business; or
 15.1.4 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
 15.2 On termination of the contract we shall be entitled immediately to cancel all Services. We shall then be entitled to payment for work already carried out and other additional costs.

16. Notices

16.1 Any notice to be given by either to the other party may be sent by either email, fax or recorded delivery to the registered office or principal place of business or other address of the other party as appearing in this contract or ancillary application forms or such other address as such part may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by recorded delivery shall be deemed to be served two days following the date of posting.

17. Entire Contract

17.1 These terms and conditions together with any documents expressly referred to in them, contain the entire contract between the Supplier and the Customer relating to the subject matter covered and supersede any previous contracts, agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. You confirm that, in agreeing to these terms and conditions, you have not relied on any representation save insofar as the same has expressly in these terms and conditions been made a representation and you agree that you shall have no remedy in respect of any misrepresentation (other than a fraudulent misrepresentation) which has not become a term of this contract. No waiver by the Supplier of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provisions. If any provision of this contract shall be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this contract and shall not affect the validity and enforceability of any remaining provisions. This is the entire agreement between the parties relating to the subject matter herein and shall not be modified except in writing, signed by both parties.

18. Cancellation

18.1 The Supplier may cancel this agreement at anytime by giving written notice to the Customer. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.

19. Assignment

19.1 Neither party shall assign the whole or any part of the contract.

20. Waiver

21.1 No waiver by the Supplier of any breach of the contract terms by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

21. Confidentiality

22.1 (Except where in the public domain otherwise than as a result of a breach of the contract) information which the Supplier discloses or provides to the Customer and any information relating to the Supplier, its business, goods, services or processes which may have come or may come into the possession or control of the Customer in the course of the Contract shall be confidential and the Customer shall not use or disclose such information except in relation to the contract.

22. Illegality

23.1 The illegality, invalidity or unenforceability of any clause or part of the contract terms shall not affect the legality, validity or enforceability of the remainder. If any such clause or part is found by any competent court or authority to be illegal, invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal, invalid or unenforceable.

23. Law

24.1 This agreement shall be governed by the laws of England and the Customer hereby agrees to submit to the exclusive jurisdiction of the English Courts.