

Tomango

Terms and conditions of trade.

1. DEFINITIONS

- 1.1 "Tomango Ltd" shall mean Tomango Ltd its successors and assigns or any person acting on behalf of and with the authority of Tomango Ltd.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Services" shall mean all services supplied by Tomango Ltd to the Client and are as described on the invoices, quotation, work authorisation or any other forms as provided by Tomango Ltd to the Client and includes any advice or recommendations (and where the context so permits any incidental supply of goods).
- 1.5 "Price" shall mean the cost of the Services as agreed between Tomango Ltd and the Client subject to clause 4 of this contract.

2. APPLICATION OF THESE TERMS AND CONDITIONS TO CONSUMERS

- 2.1 Where the Client buys Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

3. ACCEPTANCE

- 3.1 Any instructions received by Tomango Ltd from the Client for the supply of Services and/or the Client's acceptance of Services supplied by Tomango Ltd shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of Tomango Ltd.
- 3.4 The Client shall give Tomango Ltd not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Tomango Ltd as a result of the Client's failure to comply with this clause.

4. PRICE AND PAYMENT

- 4.1 At Tomango Ltd's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by Tomango Ltd to the Client in respect of Services supplied; or
 - (b) Tomango Ltd's quoted Price (subject to clause 4.2) which shall be binding upon Tomango Ltd provided that the Client shall accept Tomango Ltd's quotation in writing within thirty (30) days.
- 4.2 Tomango Ltd reserves the right to change the Price in the event of a variation to Tomango Ltd's quotation.
- 4.3 A non-refundable deposit of 25% of the quotation value will be required, unless otherwise specified at Tomango Ltd's sole discretion
- 4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.5 At Tomango Ltd's sole discretion payment shall be due before delivery of the Services.
- 4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by BACS payment.
- 4.7 VAT and other taxes and duties that may be applicable

shall be added to the Price except when they are expressly included in the Price.

5. DELIVERY OF SERVICES

- 5.1 Subject to clause 5.2 it is Tomango Ltd's responsibility to ensure that Services start as soon as it is reasonably possible.
- 5.2 Services commencement date will be put back and the web design period extended by whatever time is reasonable in the event that Tomango Ltd claims an extension of time (by giving the Client written notice) where completion is delayed by an event beyond Tomango Ltd's control, including but not limited to any failure by the Client to:
 - (a) Communicate ideas to Tomango Ltd concisely and in a timely manner; or
 - (b) Proof read each web page when requested; or
 - (c) Produce enough information and review progress.
- 5.3 The Services shall be deemed to be practically completed when the Services carried out under this contract have been completed without any omissions or defects in accordance with the specifications agreed with the Client.
- 5.4 The failure of Tomango Ltd to deliver shall not entitle either party to treat this contract as repudiated.
- 5.5 Delivery of the Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.6 Tomango Ltd shall not be liable for any loss or damage whatsoever due to failure by Tomango Ltd to deliver the Services (or any of them) promptly or at all, where due to circumstances beyond the control of Tomango Ltd.

6. TITLE

- 6.1 It is the intention of Tomango Ltd and agreed by the Client that ownership of the Services shall not pass until:
 - (a) the Client has paid all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to Tomango Ltd in respect of all contracts between Tomango Ltd and the Client.
- 6.2 Receipt by Tomango Ltd of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Tomango Ltd's ownership or rights in respect of the Services shall continue.

7. DEFECTS

- 7.1 The Client shall inspect the Services on delivery and shall within thirty (30) days notify Tomango Ltd of any alleged defect, error, omission or failure to comply with the description or quote. The Client shall afford Tomango Ltd an opportunity to inspect the Services within a reasonable time following delivery if the Client believes the Services are defective in any way. If the Client shall fail to comply with these provisions the Services shall be presumed to be free from any defect or damage. For defective Services, which Tomango Ltd has agreed in writing that the Client is entitled to reject, Tomango Ltd's liability is limited to replacing the Services.

8. INTELLECTUAL PROPERTY

- 8.1 Where Tomango Ltd has designed, drawn or written Services for the Client, then the copyright in those designs and drawings shall remain vested in Tomango Ltd, and shall only be used by the Client at Tomango Ltd's discretion.
- 8.2 Any code/data that is created by Tomango Ltd and purchased on a commission basis, remains the sole property of Tomango Ltd.
- 8.3 The Client warrants that all designs or instructions to Tomango Ltd will not cause Tomango Ltd to infringe any patent, registered design or trademark in the

- execution of the Client's order.
- 8.4 Should the Client require the Services to be used or displayed in another medium beyond that described in the original proposal or quotation, the Client shall submit a request in writing to Tomango Ltd. Any such request shall be approved or declined at Tomango Ltd's sole discretion who may charge an additional fee for any additional, approved use.
- 8.5 Neither the Client, nor any third party agent of the Client, shall be entitled to re-edit or otherwise amend the Services or preparatory concepts or artwork without having first obtained the written permission of Tomango Ltd. The granting of such permission will be at the sole discretion of Tomango Ltd.
- 8.6 The Client will, according to the Copyright Design and Patents Act 1998, acknowledge Tomango Ltd as the creator or author or designer of delivered Services.
- 8.7 The Client agrees that Tomango Ltd is under no obligation to retain for safe-keeping any originals or copies of the Services or any earlier version of the Services or draft scripts or storyboards or roughs or scamps or layouts or images or concepts or graphics or software or preparatory materials involved in creating the Services unless otherwise agreed in writing.
- 8.8 The Client acknowledges that Tomango Ltd is under no obligation to provide copies or originals of the preparatory items detailed in the above clause 8.5 to the Client, without Tomango Ltd's prior written permission which may or may not be given at Tomango Ltd's sole discretion.
- 8.9 The Client grants Tomango Ltd a non-exclusive and royalty free license to copy, perform or use any materials or items provided by the Client for the purpose of delivering the agreed Services.
- 9. SALE OF SERVICES ACT 1979 AND SUPPLY OF SERVICES AND SERVICES ACT 1982**
- 9.1 This agreement is subject to the provisions of the Sale of Services Act 1979 and the Supply of Services and Services Act 1982 (or any replacement or re-enactment thereof) in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 9.2 Notwithstanding clause 9.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions the Sale of Services Act 1979 and the Supply of Services and Services Act 1982 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.
- 10. DEFAULT & CONSEQUENCES OF DEFAULT**
- 10.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 10.2 Tomango Ltd may charge interest on overdue invoices in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 10.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Tomango Ltd from and against all costs and disbursements incurred by Tomango Ltd in pursuing the debt including legal costs on a solicitor and own client basis and Tomango Ltd's collection agency costs.
- 10.4 Without prejudice to any other remedies Tomango Ltd may have, if at any time the Client is in breach of any obligation (including those relating to payment), Tomango Ltd may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. Tomango Ltd can charge a reactivation fee of £150 payable before the website is reactivated. Tomango Ltd can also decline further hosting services. Tomango Ltd will not be liable to the Client for any loss or damage the Client suffers because Tomango Ltd exercised its rights under this clause and 10.5.
- 10.5 The code/data referred to in clause 8.2 will be removed from the website in the event of default. Tomango Ltd takes no responsibility for any loss of search engine ranking or position as a result of such action.
- 10.6 If any account remains overdue after fourteen (14) days then an amount of 20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
- 10.7 Without prejudice to Tomango Ltd's other remedies at law Tomango Ltd shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Tomango Ltd shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to Tomango Ltd becomes overdue, or in Tomango Ltd's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 11. SECURITY AND CHARGE**
- 11.1 Despite anything to the contrary contained herein or any other rights which Tomango Ltd may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Tomango Ltd or Tomango Ltd's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that Tomango Ltd (or Tomango Ltd's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - should Tomango Ltd elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Tomango Ltd from and against all Tomango Ltd's costs and disbursements including legal costs on a solicitor and own client basis.
 - The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Tomango Ltd or Tomango Ltd's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 11.1.
- 12. CANCELLATION**
- 12.1 Tomango Ltd may cancel these terms and conditions or cancel delivery of Services at any time before the Services are delivered by giving written notice. On giving such notice Tomango Ltd shall repay to the Client any sums paid in respect of the Price. Tomango Ltd shall not be liable for any loss or damage whatever arising from such cancellation.
- 12.2 In the event that the Client cancels delivery of Services, the Client shall be liable for any loss incurred by Tomango Ltd (including, but not limited to, any loss of profits) up to the time of cancellation.

12.3 In the event that the Client cancels delivery of the Services after work has commenced, then the Client will be liable for a cancellation fee of 25% of the total Price. The cancellation fee climbs to 100% of the Price if the Client takes more than 6 months from the date that work commences to deliver the necessary information required for Tomango Ltd to complete delivery of the Services.

12.4 In the event that the Client cancels delivery of 'Marketing Packages' or 'Maintenance Package' of an agreed duration, the Client shall be liable for the remainder of the total fee for the agreed duration.

13. DATA PROTECTION ACT 1998

13.1 The Client and the Guarantor/s (if separate to the Client) authorises Tomango Ltd to:

- (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
- (b) to disclose information about the Client, whether collected by Tomango Ltd from the Client directly or obtained by Tomango Ltd from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Client on publicly accessible credit reporting databases.

13.2 Tomango Ltd may also use information about the Client to monitor and analyse its business. In this connection the Client authorises Tomango Ltd to disclose personal information to agents or third parties engaged by Tomango Ltd.

13.3 The Client consents to the transfer of information outside of the European Economic Area for the purposes listed above.

13.4 Where the Client is an individual the authorities under (clause 13.1) are authorities or consents for the purposes of the Data Protection Act 1998.

13.5 The Client shall have the right to request Tomango Ltd for a copy of the information about the Client retained by Tomango Ltd and the right to request Tomango Ltd to correct any incorrect information about the Client held by Tomango Ltd.

14. LIMITATION OF LIABILITY

14.1 Tomango Ltd shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit or goodwill) suffered by the Client or any third party arising out of a breach by Tomango Ltd of these terms and conditions.

14.2 In the event of any breach of this contract by Tomango Ltd the remedies of the Client shall be limited to damages and Tomango Ltd's liability (if any) whether in contract, tort or otherwise in respect of any defect in the Services, or for any breach of these terms and conditions, or of any duty owed to the Client in connection with them shall be limited to the amount of the Price.

14.3 For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict Tomango Ltd's liability to any person for death or personal injury to that person resulting from Tomango Ltd's negligence.

15. TOMANGO LTD'S UNPAID RIGHTS

15.1 Where the Client has left any item with Tomango Ltd for repair, modification, exchange or for Tomango Ltd to perform any other Service in relation to the item and Tomango Ltd has not received or been tendered the whole of the Price, or the payment has been dishonoured, Tomango Ltd shall have:

- (a) a lien on the item;
- (b) the right to retain the item for the Price while Tomango Ltd is in possession of the item;
- (c) a right to sell the item.

15.2 The lien of Tomango Ltd shall continue despite the

commencement of proceedings, or judgement for the Price having been obtained.

16. GENERAL

16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of England and Wales and are subject to the jurisdiction of the courts of Lewes.

16.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Tomango Ltd.

16.4 Tomango Ltd may license or sub-contract all or any part of its rights and obligations without the Client's consent.

16.5 Tomango Ltd reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Tomango Ltd notifies the Client of such change. Except where Tomango Ltd supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.

16.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.