



Terms & Conditions of Business

1. GENERAL

- (a) In these Terms and Conditions:-
- (i) "the Company" means Ketchup Marketing Limited, registered office 21 B Melton Road, Long Clawson, Melton Mowbray, Leicestershire, LE14 4NR and its employees, agents and assigns.
 - (ii) "Goods and Services" means the goods sold and/or services rendered by the Company listed in The Proposal
 - (iii) "The Customer" means the person, firm or company with whom the Contract is made.
 - (iv) "The Contract" means the contract or agreement made between the Company and Customer for the acquisition of the Services by the Customer. "The Host" means the Internet Service Provider specified in The Proposal "Support" means the support (if any) agreed between the Company and the Customer described in The Proposal "Website" means the website described in the Proposal "the Proposal" means the specification and associated cost estimations of projects drawn up and documented prior to the commencement of work. "The Software" means the software described in the Proposal.
- (b) The Customer represents that it enters into the Contract in the course of its business and not as a consumer.
- (c) These Conditions shall apply to the Contract except where expressly excluded by the Company in writing. Any general Conditions of Order or other Terms of Business offered by or on behalf of the Customer shall, if inconsistent with these Conditions, be deemed to have been rejected by the Company unless expressly accepted in writing by a Director of the Company.

2. QUOTATIONS AND PRICES

- (a) Any estimate or proposal given by the Company shall be open for acceptance by the Customer for a period of 30 days and if not accepted within this period shall be withdrawn by the Company.
- (b) The Company reserves the right to charge the Customer such additional amounts as required in the event the Customer requests any alterations and/or additions to the Specification, Software or Website or Services and the Company, if it agrees to make such alterations and/or additions, shall do so at its convenience and the Customer acknowledges that the Company may not have the time or resources to undertake such changes immediately.
- (c) The Customer agrees it is fully responsible for provision of all textual content to be included in the Software or Website or Services and shall supply the same to the Company in an appropriate virus-free electronic format and further for the avoidance of doubt the Customer acknowledges and agrees that the Company shall not accept or transcribe any hand written content supplied.
- (d) If the Company's costs incurred in respect of the Services increase due to the following circumstances which may occur after the Customer's Order was accepted, the Company may at its option at any time before delivery give notice to the Customer of an increase in the Contract price under this Condition due to:-
- (i) Variation and/or alteration of instructions and/or details and/or a failure by the Customer or its representative to provide the same;
 - (ii) Overtime costs incurred if the delivery date does not permit sufficient time for the work to be completed during normal working hours i.e. 9am – 6pm Monday – Friday.
- (e) The Company reserves the right to sub-contract work.
- (f) Any order accepted by the Company may be amended or cancelled only with the Company's prior written consent and any costs incurred by the Company in connection with that order may be charged to the Customer.
- (g) The Customer agrees that if so required by the Company it shall pay for all work carried out at the Customer's request whether experimentally or otherwise.
- (h) Value Added Tax will be charged in accordance with United Kingdom legislation in force at the tax point date whether specified on the estimate or proposal or not.

3. DELIVERY

- (a) Time of delivery shall not be the essence of any Contract.
- (b) Any delivery date specified is a genuine forecast in the light of current conditions but shall not be binding on the Company and is subject to extension to cover delays caused by events beyond the Company's control.
- (c) Whilst every reasonable precaution will be taken to ensure accuracy of despatch, no claims will be accepted by the Company in the event of damage to or non-delivery or late delivery of Goods or Services by whichever means of transport have been used once the goods have left the Company's premises.
- (d) Any additional work to replace lost or damaged goods where such loss or damage is not due to the Company's negligence will be charged for.

4. TERMS OF PAYMENT

- (a) Payments shall be made to the Company's business address and the Customer agrees to make final payment in accordance with the payment terms agreed on page one (1) of this Agreement or within 14 days of the date of the Company's invoice, whichever is later.
- (b) Unless otherwise agreed in writing and signed by a Director of the Company, fifty per cent (50%) of the total price agreed in the Contract shall be due from the Customer (by way of deposit) before the Company proceeds to provide the Services hereunder and the Company reserves the right to refuse to proceed with supply of the Services hereunder until the same is received in full. The setup cost for any Website or related project will be charged as a one off cost as quoted. 50% of this cost is payable upon the signing of this agreement with the remaining 50% invoiced during the project on a pre-agreed invoicing schedule up to launch.
- (c) The Company reserves the right to charge and be paid interest on all sums due from the Customer at the rate of 5% above the base lending rate of the Royal Bank of Scotland from the date upon which payment is due until the date upon which it is received as well before as after any court judgement.
- (d) Invoices are payable in full and the Customer shall not be entitled, for any reason whatsoever, to withhold or set-off payment or make any counterclaim.
- (e) The time of payment shall be the essence of the Contract.
- (f) Dishonoured cheques will be charged at £35.00 per presentation.

5. DEFECTS IN THE SERVICES

The following terms will apply to all Goods and Services supplied by the Company whether artwork, logo or design has been created by the Company or the Customer has supplied the artwork files:-

- (a) Whilst every care is taken by the Company when designing the Website and processing digital media, it is the responsibility of the Customer to approve and sign for any designs, web pages, digital or other media immediately upon receipt thereof whether laser proofs have been supplied by the Company or not.
- (b) The Company shall not be liable in any way whatsoever for any defects in Services beyond the Company's reasonable control.
- (c) If the Customer alleges that the Goods and Services or the Website does not conform to the Customer's Specification and order whether as to content or quality it shall notify the Company within five (5) working days of delivery by post, e-mail or facsimile transmission of such allegation and the failure to make such notification shall be deemed to be conclusive evidence of the conformity of the Services to the Customer's Order in every respect.
- (d) The Company's liability for defects in the Goods and Services caused by the negligence or other breach of the Company shall be limited to the replacement by the Company of the designs, digital or other media at no additional cost to the Customer provided that such defect is notified in accordance with clause 5(c) above and the software/designs have been returned for scrutiny by the Company as evidence of the alleged defects.
- (e) In any event of liability of the Company for defects/errors in the Services shall be limited to a refund of the invoice price of the Services in respect of which any claim is made against the Company.
- (f) The Company shall not be liable for any claims for consequential loss of profit or any other loss calculated on a time basis of whatsoever nature.
- (g) Where a complaint or a claim has been made in respect of Services proved or alleged to be defective the Company may suspend further deliveries of any Services under this Contract which may have the same or similar alleged defects until the validity of such complaint or claim has been finally determined and in such event the applicable delivery dates shall be postponed accordingly.
- (h) The Company shall not be liable for indirect loss or third party claims occasioned by delay in completing the work nor for any loss to the Customer in delay of transit.



6. RISK, TITLE AND INTELLECTUAL PROPERTY RIGHTS

Unless otherwise agreed in writing and signed by both parties the entire copyright, design right and all other intellectual property rights subsisting in or attached to the Software and any other material created by the Company (including but not limited to designs and logos) shall belong to the Company and shall not be licensed or assigned to the Customer other than as provided for herein.

This Contract shall operate as a licence for the Customer to use the Goods and Software and the intellectual property rights therein as provided for overleaf until the date payment is due and, provided that payment in full is made for the Software to be licensed and the Goods and Services on or before 5pm on the date due for payment, this Contract shall operate as an automatic licence (or an automatic assignment of intellectual property rights if this is agreed in writing and signed by both parties) for the Customer to continue to use the Website, Goods and Services and the intellectual property rights therein as provided for in this Contract subject to the terms herein, but, if payment in accordance with the Contract is not made on or before 5pm on the date due for payment there shall be no assignment of rights and any right or licence that the Customer may have had to use the Website or Goods and Services and/or any intellectual property rights therein contained shall be automatically revoked and the Company reserves the right to take such action as may be necessary and appropriate in both the civil and criminal courts and all intellectual property rights in the Goods and Services shall remain the property of the Company and the Customer shall have no further right to use the Goods and Services in any way prohibited by the Contract or statute or common law unless otherwise agreed in writing and signed by a Director of the Company.

All rights and licences granted to the Customer hereunder by the Company are conditional on the Goods and Services and the intellectual property rights therein being used only for the purposes agreed in the Contract and the Customer hereby undertakes and agrees to promptly notify the Company in order to obtain its approval (which shall not be unreasonably withheld or delayed) to use the Goods and Services and/or any intellectual property rights therein contained for any additional purpose including but not limited to re-use, re-print or duplication and the Customer further warrants and agrees to pay the Company the appropriate fee as listed in the Company's scale for such charges from time to time copies of which are available on request.

All risk in connection with the Goods and Services or Website shall pass to the Customer upon delivery but, where the Goods and Services are collected by or on behalf of the Customer from the premises of the Company or the Premises of any agent or subcontractor of the Company the risk shall pass to the Customer at the time the Goods and Services are handed over.

7. LIBELLOUS/ILLEGAL MATTER

- (a) The Company shall not be required to process any matter which, in its opinion, is or may be of any illegal or libellous nature or of an infringement of the proprietary, intellectual property or any other rights of any third party or constitutes unsolicited advertising or promotional material.
- (b) The Company shall be completely indemnified by the Customer in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent or design or any other proprietary, intellectual property or personal rights contained in any materials processed for the Customer and the indemnity shall extend to any amounts paid on lawyer's advice in settlement of any claim.
- (c) The Company shall be at liberty at any time to discontinue work if in the Company's opinion such work may be libellous or illegal or in breach of any third party rights and in such circumstances the Customer shall be liable to pay the Company for the work carried out prior to the date of discontinuance.

8. OWNERSHIP OF ARTWORK/MAGNETIC MEDIA/PRINT/SERVICES

- (a) All digital or electronic material/artwork/films/magnetic media/print/Services produced or originated during the course of production of the Services shall remain the property of the Company who reserve the right to dispose of the same immediately after completion of the Contract.
- (b) At the request of the Customer this period may be extended and a charge may be made for the storage of these materials and whilst every care will be taken to keep the materials in good condition, the Company accepts no liability for damage or loss of any kind.
- (c) The Company may be prepared to negotiate with the Customer for the sale of such materials at any time during the period mentioned in this clause.
- (d) All designs and visuals are submitted by the Company in confidence, and unless otherwise agreed in writing, it owns the Copyright in them and the right to reproduce any such design remains its property.

9. STORAGE OF CUSTOMER'S PROPERTY

- (a) The Company accepts no liability for any loss or damage to property left in the Company's possession unless the Customer has given written instructions requiring the property to be retained and has paid a storage charge including any charge for insurance.
- (b) Whilst every care and precaution is taken against loss or damage to originals or other articles entrusted to the Company, all are held at the sole risk of the Customer and the Company shall not be liable should damage or loss occur.
- (c) The Customer is advised to obtain insurance.
- (d) If there remains outstanding sums in respect of the Customer's obligation to pay the Company for the Goods and Services supplied under this Contract or to be supplied under this or any further Contract, the Company shall have a general lien on all Services and property in its possession whether worked on or not and shall be entitled, on the expiration of fourteen days notice, to dispose of such Services or property in such manner and at such price as it thinks fit and to apply the proceeds of that sale after having given credit for the costs of sale towards such debts of the Customer as may be outstanding.
- (e) Customer's property and all property supplied to the Company by or on behalf of the Customer will be held, worked on, and carried at Customer's risk.
- (f) Metal, film, glass and other materials used in the production of types, plates, moulds, stereotypes, electrotypes, film-setting, positive and the like shall remain the exclusive property of the Company.
- (g) Type may be distributed and lithographic, photo-gravure, or other work effaced immediately after the order is executed unless written arrangements are made to the contrary. In the latter event, rent may be charged.

10. FORCE MAJEURE

- (a) Every effort will be made to carry out the contract but its due performance is subject to suspension or cancellation by the Company or to such variations as the Company may find necessary as a result of inability to secure labour, materials or suppliers, or as a result of any act of God, illness, accident, war, strike, lockout or any other labour dispute, fire, flood, drought, legislation or other cause (whether of the foregoing class or not) beyond the control of the Company.

11. MATERIALS SUPPLIED

The Company may reject any material supplied by the Customer which appears unsuitable and additional costs will be incurred if materials are found to be unsuitable during production of the Website and provision of the Goods and Services. Where materials are so supplied by the Customer, responsibility for defective work will not be accepted by the Company unless this is due to failure by the same to use reasonable skill and care.

12. TERMINATION DUE TO INSOLVENCY OR BREACH

If the Customer shall be in breach of any of its obligations hereunder or if it becomes subject to any bankruptcy petition or order or if a company, becomes subject to any winding up order or is in any way deemed insolvent or if it has an administrator, receiver or administrative receiver appointed over the whole or any part of its assets or undertakings or is unable to pay its debts as they become due, the Company, in its absolute discretion and without prejudice to any other right or remedy shall:- refuse to proceed further with and charge for all or any work already carried out (whether or not the same shall have been completed) together with all or any materials purchased on the Customer's behalf and such debt shall be immediately due by the Customer, its trustee in bankruptcy, administrator or other official dealing with its financial position and have a lien over all the Customer's Services and property in its possession in respect of all unpaid debts due from the Customer and shall on the expiry of 14 days notice to the Customer be entitled to dispose of such Services and property in such manner and at such price as it deems fit.

13. LAW OF THE JURISDICTION

This Contract shall be governed exclusively by the Law of England and the Customer hereby accepts the jurisdiction of such Courts, whether in England or otherwise, as the Company may nominate for the purpose of trying any Action out of this Contract.
Registered in England and Wales Company No. 5917832