

TERMS AND CONDITIONS 2010

DEFINITIONS AND INTERPRETATION

1.1 In this contract:

1.1.1 any reference to a statutory provision shall be deemed to include a reference to any statutory modification or re-enactment of it;

1.1.2 the clause or condition headings do not form part of this contract and shall not be taken into account in its construction or interpretation.

1.2 In these conditions the following terms shall have the following meanings:

“the Supplier” means SamL Design Ltd

Registered in England & Wales, company no. 7139062

“the Customer” means the customer identified on each quotation or other Relevant Document.

“Contract” means this Contract (or any Contract for project management, the production of Design Work, the sale of Goods, or for repair or maintenance services between the Supplier and the Customer).

“Design Work” means the preparation in accordance with general and detailed specifications supplied by the Customer for the design and operation of a Web Site including consultation prior to and during the project development, project development, models

“Web Site” means any Design Work that falls within the general understanding of a Web Site and which may be published and is available to the Customer via a webserver whether or not that Web Site is accessible to view by parties other than the Customer or which is stored on any compact disc floppy disc or other means and sufficiently developed to publish on a webserver if the Customer so wishes

“Price” means the price stated on each quotation, invoice or other Relevant Document always provided that where there is any discrepancy between the Price stated on any of the aforesaid Price on the invoice shall prevail.

“Relevant Document” means any quotation, survey, letter or other document not specifically defined pertaining to Project Management, the Design Work, Goods or services provided by the Supplier to the Customer produced and signed by the Supplier.

“Commencement Date” means the commencement date specified in any relevant quotation or Relevant Document whichever is the earlier.

“Contract Date” means the Commencement Date or the date upon which the Supplier's quotation is accepted in writing by the Customer whichever is the earlier.

“the Goods” means any goods including whole Units, parts and components of or materials contained in them (a summary of which is contained in the relevant Quotation or amendment thereto relevant quotation).

“Project Manager” means project work carried out by the supplier to facilitate the procurement of the Design Works or Web Site where the Supplier has not carried out the entire Design Work himself but is concerned in whole or in part with the co-ordination of other designers and/or service providers.

EXISTENCE OF THE CONTRACT

2.1 No Contract shall come into existence until the Contract has been completed and signed on behalf of the Customer and the order acknowledgement has been signed on behalf of the Supplier

2.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer

2.3 Except as expressly provided for in this Contract no variation or amendment of the Contract or oral promise or commitment related to it shall be valid unless committed to writing and signed by or on behalf of both parties

QUOTATIONS AND PRICE AND PAYMENT FOR THE SUPPLY OF DESIGN WORK; PASSING OF RISK AND TITLE

3.1 Where provided with a quotation by the Supplier unless otherwise stated on it, it shall be open for acceptance within 30 days of the date of the quotation.

3.2 The Price invoiced is calculated in respect of the Goods, Project Management or Design Work actually supplied irrespective of the items specified in any quotation.

3.3 The Price quoted and/or invoiced is for the Goods, Project Management or Design Work carried out by the Supplier only it is exclusive of any costs payable to any third party for goods or services or

design work required to facilitate or enhance the Design Work (eg the purchase of a world wide web domain). Such additional costs are entirely the responsibility of the Customer who shall contract with the said third party directly and the Customer acknowledges the Supplier shall at no time be the agent of either the Customer or the third party in respect of the procurement of such goods, Design Work or services.

3.4 Save for the cost of initial software or other licenses specifically included in the Supplier's quotation the cost of any license will be payable by the Customer in addition the Price.

3.5 The Supplier shall have the right to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the Contract Date. Price changes shall take effect on the date of service on the Customer of notice of the change.

3.6 All invoices are payable in sterling on the date stated in the Supplier's invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason at all save where the supplier agrees in writing to a deduction from or retention of all or part of the payment due.

3.7 Without prejudice to any other rights of the Supplier if the Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice or in any other way agreed and shall pay interest on any overdue amount from the date of which payment was due to the date of actual payment (whether before or after judgment) on a daily basis at a rate of 8% per annum and reimburse to the Supplier all costs and expenses (including administrative and legal costs) incurred in the collection of any overdue amount (whether or not legal proceedings are commenced).

3.8 For the Purposes of section 12 of the Sale of Goods Act 1979 the Supplier shall transfer only such title or rights in respect of the Goods or Design Work as the Supplier has and if the Goods or Design Work are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Supplier.

3.9 Notwithstanding the earlier passing of risk, all intellectual property rights **title or other interest in the Design Work or Goods shall remain with the Supplier and shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full.**

3.9.1 The Supplier shall reserve the right to retain any of the Design Work or Goods or prevent access to it by the Customer or any third party by way of any medium including the world wide web until the amount due under the invoice for them (including interest and costs) has been paid in full. Where payment is due in installments the Supplier shall be entitled to cease any further Design Work until the installment payment is made and where an installment is outstanding for more than 30 days the Supplier may at its discretion terminate the contract and recover all sums due to the date of termination.

3.10 The Supplier may maintain an action for the price of any Goods or Design Work notwithstanding that title in them has not passed to the Customer.

3.11 The Supplier shall be entitled to allocate any money paid by the Customer in respect of any matter to any outstanding invoice.

SUPPLY AND INSTALLATION OF GOODS OR DESIGN WORK

4.1 The Design Work or Goods are delivered to the Customer when the Supplier makes them available to the Customer by whatever means including the world wide web that the Supplier deems suitable.

4.2 notwithstanding the conditions contained in any other part of this Contract the Customer shall be responsible for insuring the Design Work or Goods or putting in place adequate insurance to deal with any potential claims by third parties that may arise as a result of the Design Work or Goods at all times after delivery.

4.3 Any dates quoted by the Supplier for the delivery of the Design Work are approximate only and shall not form part of the Contract.

4.4 In the event that in order to operate the Design Work a software license is required it is the Customer's responsibility to make itself aware of the terms and conditions of any such a license, to operate the software within the terms of any such license and ensure that all licenses are fully and properly paid up. The Supplier shall not be liable in respect of any loss to the Customer in respect of the Customer's failure to comply with this clause

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4.5 If the Customer fails:

4.5.1 to take delivery of the Design Work or Goods or any part of them on the due date; or

4.5.2 to provide any instructions or documents required to enable the Design Work or Goods to be delivered on the due date; the Supplier may on giving written notice to the Customer store or arrange for the storage of the Design Work or Goods and on the service of the notice;

(a) risk in the Design Work or Goods shall pass to the Customer;

(b) delivery of the Design Work or Goods shall be deemed to have taken place; and

(c) the Customer shall pay to the Supplier all costs and expenses including storage any redelivery and insurance charges arising from its failure.

4.6 The Supplier shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

4.7 (a) Whether or not the Design Work or Goods were installed onto the world wide web by the Supplier and whether or not the Customer's Web Site is hosted or managed by the Supplier the Customer shall not interfere with or adjust the Design Work or Goods in any way (subject to (b) below) but on any perceived fault occurring shall immediately inform the Supplier who shall without delay repair or replace it subject to the conditions of the Contract. The Customer shall compensate the Supplier in full on demand for all loss and damage to the Design Work or Goods caused by willful misuse of them.

(b) Where the Design Work or Goods incorporate a facility to allow the Customer to update or vary content or data they shall be entitled to do so but if by doing so they cause a malfunction to the Design Work or Goods they shall notify the Supplier immediately in accordance with part (a) of this clause and shall be liable in respect of any cost incurred for correcting the malfunction.

4.8 The Customer shall keep the Design Work or Goods maintained in accordance with the manufacturers and Supplier's recommendation until title in the Design Work passes to the Customer and in any event in accordance with the conditions this Contract.

RESPONSIBILITY OF THE CUSTOMER

SECURITY AND DATA PROTECTION

5.1 Notwithstanding the supply of any Goods, software or Design Work to the Customer which is designed or intended to protect the Design Work or any part of the Customer's property from infiltration or interception by a third party (including but not limited to physical entry to the Customer's property, hacking into the systems, sending viruses, intercepting by electronic or other means any wireless or invisible link between units) which may result in the damage, theft or loss of any of the Design Work; Goods; Customers own equipment or data held thereon the Supplier shall not be liable howsoever or whatsoever for any such damage theft or loss.

5.2 It is the Customer's sole responsibility to ensure that they take necessary precautions to protect any data held on or by the Design Work or Goods. The Supplier recommends (but for the avoidance of doubt it is not a condition of this contract) that the Customer makes at least two back up copies of all data held on or by the Design Work or Goods or Web Site at regular intervals and at least one copy should be kept away from the Customer's premises

5.3 Where the construction of the Design Work or Goods includes the transfer of the Customer's data into the Design Work or Goods the Supplier has no liability whatsoever or howsoever in respect of data which fails to transfer in whole or in part, or which corrupts in any way in the course of transfer or in respect of any form of corruption introduced to the Design Work by the said data or in respect of any form of corruption damage or loss suffered to any part of the Customers property (including but not restricted to software or systems) in the course of the said transfer of data.

SOFTWARE AND LICENCES

5.4 Where the Supplier supplies to the Customer any software in any form whatsoever it is the Customer's responsibility to operate that

software in accordance with any licence or other condition imposed by the manufacturer of the software on the user

RELATIONSHIPS WITH THIRD PARTY SUPPLIERS

5.5 In the course of developing the Design Work or Web Site or Goods or the Project Management it may be that the Supplier requires the Customer or the Customer chooses to enter into a contract with a third party for the provision of certain services such as but not restricted to a payment service provider, internet service provider, or provider of specialist programming, creative or marketing services the Supplier shall not be liable whatsoever or howsoever (and shall not be deemed to be the agent for either the customer or any such third party) for the choice of third party supplier made by the Customer or for any breaches of contract arising by either the Customer or the third party in respect of that contract

5.6 The Supplier shall not be liable howsoever or whatsoever in respect of any failure whatsoever by any supplier of services or other third party such as but not restricted to an internet service provider, payment service providers or utility providers or in respect of any operator error or any other person given access to the Design Work or Web Site or Goods by the Customer save for the Supplier

5.7 The Supplier will endeavour to construct the Design Work or Web Site or Goods in accordance with the law relating to such Design Work or Goods.. The Supplier is not a legal expert and does not hold himself out as such and shall not be liable howsoever or whatsoever in respect of any breach of any enactment or regulation relating to production of the Design Work or Goods and it shall be the Customer's sole responsibility to ensure that the Design Work or Goods comply with all relevant laws in respect of the operation and content of the said Design Work or Goods

5.8 In any event the Supplier shall not be responsible for failing to comply with any statutory provision or regulation where a change in the law has occurred after the Web Site or Design Work has been delivered.

5.9 In so far as the Supplier may be liable in any way whatsoever by any third party in respect of any matter connected with the Design Work, Web Site or Goods the Customer shall indemnify the Supplier in respect of any such claim or award.

SCOPE OF THE CONTRACT

6.1 Under no circumstances shall the Supplier have any liability of whatever kind for:

6.1.1 any defects resulting from corruption; accident; improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Supplier; or the manufacturer of any Design Work or Goods; or neglect; or from any instructions or material provided by the Customer;

6.1.2 any Design Work or Goods which have been adjusted, modified or repaired except by the Supplier;

6.1.3 the suitability of any Design Work for any particular purpose or use under specific conditions whether or not the purposes or conditions were known or communicated to the Supplier save where:

6.1.3.1 the Supplier has carried out a survey and made recommendations regarding the suitability of certain Design Work or their installation and/or their maintenance and/or hosting of any Web Site; and

6.1.3.2 the Design Work or Web Site have been supplied, installed, maintained and repaired in accordance with those recommendations; and

6.1.3.3 the Customer's circumstances or the information provided by the Customer to the Supplier used to form the basis of that recommendation have not altered;

6.1.4 any substitution by the Customer of any material or components not forming part of any specification of the Design Work agreed in writing by the Supplier;

6.1.5 any descriptions, illustrations, specifications, figures as to performance, drawings and other particulars by the Supplier contained in the Supplier's catalogues, price lists, or elsewhere since they are merely intended to represent a general idea of the Project Management Design Work Goods or Web Sites and not form part of the contract or be treated as representations;

6.1.6 any technical information recommendations statements or advice furnished by the Supplier its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or

6.1.7 any variations in the Design Work or Goods or changes of their specification or substitution of any material or components if the variation or substitution does not materially affect the characteristics of the Design

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Work or Goods or Web Site and the substituted material or components are of a quality equal or superior to those originally specified.

EXTENT OF LIABILITY

7.1 The Supplier shall have no liability to the Customer for any loss or damage of any nature (including but not restricted to damage to any of the Customer's property or data or other intellectual property) arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach or statutory or other duty on the part of the Supplier or in any other way out of in connection with the performance or purported performance of or failure to perform the Contract except for death or personal injury resulting from the Supplier's negligence as expressly stated in these conditions.

7.2 If the Customer establishes that the Design Work or Goods do not comply with their description the Supplier shall at its option correct any defects with the Design Work or Web Site or allow the Customer credit for their invoice value subject to the terms of this Contract.

7.3 The delivery of any repaired or replacement Design Work or Goods shall be at the Customer's premises or other delivery point specified for the original Design Work.

7.4 Where the Supplier is liable in accordance with this condition in respect of only some or part of the Design Work or Goods the Contract shall remain in full force and effect in respect of the other or other parts of the Design Work or Goods and no set-off or other claim shall be made by the Customer against or in respect of such other or other parts of the Design Work or Goods.

7.5 No claim against the Supplier shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been done to the Design Work or Goods by any person except the Supplier.

7.6 The Supplier shall not be liable where any Design Work or Goods, the Price of which does not include carriage, are lost or damaged in transit and all claims by the Customer shall be made against the carrier. Replacements for such lost or damaged Design Work or Goods will, if available, be supplied by the Supplier at the Prices ruling at the date of dispatch.

7.7 In no circumstances shall the liability of the Supplier to the Customer under the Contract exceed the Suppliers invoice value of the Design Work or Goods or Web Site or Project Management (excluding any sum due to any third party).

Claims notification

7.8 Any claim for non-delivery of Design Work or Goods or Web Site or Project Management shall be notified in writing by the Customer to the Supplier within 10 days of the date of the Supplier's invoice.

7.9 Any claim that any Design Work or Goods or Web Site are defective in any way on delivery or do not comply with their description shall be notified by the Customer to the Supplier within 30 days of their delivery.

7.10 Any alleged defect shall be notified by the Customer to the Supplier within 30 days of the delivery of the Design Work or Goods or Web Site; in the case of defect which is not reasonably apparent within 30 days, within 7 days of the defect coming to the Customer's attention and in any event within 3 calendar months.

7.11 Any claim under this condition must be in writing and must contain full details of any allegedly defective Design Work or Goods or Web Site.

7.12 The Supplier shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedures in these conditions.

GENERAL

8.1 The Supplier may sub-contract or assign the performance of the contract in whole or in part.

8.2 The Customer shall not assign (without first obtaining the Supplier's written consent) the contract in whole or in part.

8.3 The Supplier shall have a lien on all the Customer's property in the Supplier's possession for all amounts due at any time from the Customer and may use, sell or dispose of that property as agent for and at the expense of the Customer and apply the proceeds in and towards the payment of such amounts on 28 days notice in writing to the Customer. On accounting to the Customer for any balance remaining after payment of any amounts due to the Supplier and the costs of sale or disposal the Supplier shall be discharged of any liability in respect of the Customer's property.

8.4 The Supplier may at its discretion suspend or terminate the supply of the Design Work or Goods or Web Site or Project Management or any agreement for the provision of maintenance or hosting services or Project Management if the Customer fails to make any payment when and as due or otherwise defaults in any way on his obligations under the Contract or any other contract with the Supplier or becomes insolvent, has an administrative receiver appointed of its business or; is compulsorily or voluntarily wound up or the Supplier bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.

8.5 If the Design Work or Goods or Web Site are constructed in accordance with any design or specification provided or made by the Customer the Customer shall compensate the Supplier in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim whether actual or alleged, that the design or specification infringes the rights of any third party.

8.6 Except for any which is expressly agreed to be included in the Contract all tools, patterns, materials, drawings, specifications and other data provided by the Supplier shall remain its property and all technical information, patentable or unpatentable, copyright and registered designs arising from the execution of any orders shall become the property of the Customer upon receipt by the Supplier of all outstanding sums due subject to clause 3.1 above.

8.7 The Supplier shall be entitled to recover from the Customer any costs incurred (including, but not restricted to, the Supplier's own administrative or production costs, legal costs and bailiff's costs) by the Supplier in recovering any sums due to the Supplier by the Customer including any action taken by the Supplier pursuant to condition 3.7 or 8.3 whether or not legal proceedings are actually issued.

9. This Contract shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding it except to the extent that the Supplier invokes the jurisdiction of the courts of any other country.

9.1 Any notice given under this Contract shall be in writing and may be served:

9.1.2 personally by registered or recorded delivery mail;

9.1.3 by telex or facsimile transmission (the latter confirmed by telex or post); or

9.1.4 by any other means which any party specifies by notice to the others.

9.2 Each party's address for the service of notice shall be its above mentioned address or such other address as it specifies by notice to the others.

9.2.1 A notice shall be deemed to have been served:

9.2.2 if it was served in person at the time of service;

9.2.3 if it was served by post 48 hours after it was posted;

9.2.4 if it was served by telex or facsimile transmission, at the time of transmission;

9.3 The Supplier may at any time by written notice (in addition to any other rights) terminate this Contract or suspend its perforce of all or any of its obligations arising under it immediately and without liability for compensation or damages if:

9.3.1 any payment of money payable by the Customer under this deed is not paid on the due date whether demanded or not;

9.3.2 the Customer fails to comply in all material respect with the Contract, any circumstances arise which give reasonable grounds in the Supplier's opinion for its belief that the Customer has or may become incapable of performing its obligations under this contract;

9.3.3 the Customer convened a meeting of its creditors or suffers a petition to be presented or a meeting to be convened or other action to be taken with a view to its liquidation except (with the written approval of the Supplier) for the purposes of and followed by amalgamation or reconstruction;

9.3.4 for any reason anything is done or omitted to be done as a result of which the Customer is or is liable to be struck off the Register of Companies;

9.3.5 an administration order is made in relation to the Customer;

9.3.6 the Customer makes or seeks to make any composition or arrangement with its creditors;

9.3.7 the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

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9.3.8 the Customer purports to assign the burden or benefits or change the benefits of this contract;

9.3.9 if any party takes or threatens any action including but without limitation the commencement of legal proceedings to enforce or foreclose any lien or mortgage over or in respect of any property of the Customer or to forfeit any estate or interest of the Customer in any of their premises or enters or seeks to enter into possession of them.

9.4 Except as expressly provided for in this contract no variation or amendment of this contract or oral promise or commitment related to it shall be valid unless committed to writing and signed by or no behalf of both parties.

CANCELLATION

9.5 The Supplier and the Customer may cancel the Contract by written notice in accordance with clause 9.1 above;

- By the Customer within 7 days of the Contract Date.
- By the Supplier within 9 days of receiving the customer's written acceptance of the quotation.

9.6 Save as set out specifically in clause 9.5 above or elsewhere in the Contract neither the Customer or the Supplier may cancel the Contract.

9.7 The Supplier shall not be liable for any failure in the performance of any of its obligations under this Contract caused by factors outside his control.

WARRANTY

10.1 The Supplier will repair or replace any Design Work or Goods the Customer can show have developed a fault without charge to the Customer for 3 months from the Commencement Date subject to the following:

10.1.1 the Customer must enter into an agreement for maintenance services based on the recommendations of the Supplier if the Supplier deems such maintenance services are necessary (and the Supplier will inform the Customer before any Design Work is carried out whether it is likely maintenance services will be required) and comply with the same;

10.1.2 the Customer must inform the Supplier of any fault immediately upon it becoming apparent and must follow the Supplier's recommendations as to action to be taken between the time the fault is developed and the time the Supplier inspects the Design Work or Goods or Web Site;

10.1.3 the Customer will be liable for the Supplier's call out charge and pay for the Supplier's time at hourly rate if the Customer purports to make a claim under this Warranty for Design Work or Goods not covered by the same;

10.1.4 the Warranty does not cover ordinary wear and tear or consumable Goods;

10.1.5 the Customer is not in breach of any condition of the Contract in respect of any Design Work, Goods or services supplied by the Supplier;

10.1.6 the Supplier shall not in any event have any liability to the Customer for damage to the Customer's property (including any of the Customer's data stored in or on the Design Work or Goods);

10.1.7 conditions 8.2 to 8.8 of the Contract apply to this Warranty.

10.2 Where the Supplier has supplier Goods and the Manufacturers provide a warranty that may be passed to the Customer the Supplier will provide that warranty but shall have no responsibility whatsoever in respect of any obligations on the Manufacturer specified therein.

The Customer confirms that they have read and agree to these terms and conditions and that they wish to enter into a legally binding agreement with the Supplier

Date.....

Signed.....

For and on behalf of the Supplier

Date acknowledged.....

Signed.....

For and on behalf of the Customer