

- 1.1 In these Terms the following terms have the meanings specified below:
- **“Client”** means the person or company specified in the Contract.
 - **“Content”** means all text, graphics, logos, moving images, sound, illustrations, and other materials featured, displayed or used or to be featured, displayed or used in or in relation to the Design or Website excluding any Photographs.
 - **“Contract”** means a contract for Services between MAXX and the Client incorporating these Terms and the Specification.
 - **“Design”** means designs services including in relation to brochures, logos, livery and other printed material.
 - **“MAXX”** means MAXX Design Limited which includes MAXX Digital,
 - **“MAXX Software”** the source code and compiled code comprised in the Website other than Third Party Software.
 - **“Photographs”** means any photographs provided by MAXX for use by the Client including any images derived therefrom.
 - **“Services”** means the design and/or website development services specified in the Specification.
 - **“Specification”** means the estimate or specification annexed to, or referred to in, the Contract.
 - **“Third Party Software”** any computer program comprised in the Website that is provided by a third party.
 - **“Website”** means the website (if any) to be designed and developed for the Client as specified in the Specification.
 - **“Website Design”** means the graphical, technical and navigational design of the Website as described in the Specification.
- 1.2 The Contract will be subject to these Terms and any other terms specified or referred to in the Specification. These Terms will prevail over any other terms, communication or form of contract, unless such terms are expressly agreed in writing signed by a duly authorised signatory of MAXX.
- 1.3 No waiver by MAXX of any breach of these Terms will be effective unless in writing, neither will it prejudice MAXX's rights in respect of any subsequent breach.
- 1.4 The headings in these Terms are for convenience only and will not affect the construction or interpretation of the Contract.
- 1.5 The word “including” used in these Terms will be deemed to mean “including without limitation” and “includes” and “include” will be understood similarly.

2 ESTIMATE AND FORMATION OF CONTRACT

- 2.1 Any estimate given by MAXX is subject to withdrawal at any time before the Client accepts and will lapse unless the Client accepts the estimate within the stated period of validity or (if none) 30 days of issue of the estimate.
- 2.2 On the Client's acceptance of an estimate relating to the development of a Website, MAXX will produce a Specification setting out the Services to be provided by MAXX and the fees to be charged.
- 2.3 A contract for the provision by MAXX of the Services on these Terms will be formed immediately on signature by MAXX and the Client of the Contract or on the written approval by the Client of the Specification by mail or email.
- 2.4 The Client may not cancel the Contract except with the written agreement of MAXX and on terms that the Client will indemnify MAXX 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 MAXX as a result of cancellation.
- 2.5 No variation to the Contract will be binding unless agreed in writing between the authorised representatives of MAXX and the Client. MAXX's employees or agents are not authorised to make any representations concerning the Services unless confirmed by MAXX in writing. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of MAXX which is not set out in the Specification. Nothing in this Term will exclude or limit MAXX's liability for fraudulent misrepresentation.
- 2.6 MAXX reserves the right to cancel the Contract in whole or part without liability to the Client at any time before the Services or the relevant part are performed if MAXX becomes aware that the Services infringe any applicable laws or regulations, industry standards or any third party rights or involves obscene, libellous or defamatory material. The Client will indemnify MAXX for any loss, costs, damages, charges and expenses which MAXX incurs in respect thereof.
- 2.7 Any typographical or clerical error in any estimate, acceptance of offer, invoice or other document or information issued by MAXX will be subject to correction without liability on the part of MAXX.

3 SPECIFICATION

- 3.1 The Client will provide all information, material, facilities and other assistance as is specified in the Specification and such other assistance as MAXX may reasonably request in order to assist MAXX in providing the Services.
- 3.2 It is the responsibility of the Client to ensure that it has the right to use all information and materials including any Content provided by or on behalf of the Client to MAXX, and that it is not in breach of any applicable law or regulation.

- 3.3 If MAXX, as part of the Services provided to the Client is designing or providing a Website, the following provisions will apply:
- (a) When MAXX considers that the development of the Website is substantially complete, MAXX will so notify the Client, upload the Website onto the final server as specified in the Contract and, from the date of that uploading, the parties will test the Website to ensure that it operates in all material respects in accordance with the Specification.
 - (b) Each party will use all reasonable efforts to complete the testing within the period specified therein.
 - (c) MAXX will use its best endeavours to rectify any failure of the Website to operate in all material respects in accordance with the Specification as soon as possible.
 - (d) On completion of the testing MAXX will make the Website available to the Client for use in a live environment.
 - (e) Until completion of the testing, the Client will not use, and will not allow any other person to use, the Website for any purposes other than testing.

4 LICENCE

- 4.1 MAXX grants a non-exclusive, royalty free licence to the Client to use, maintain, develop and modify the MAXX Software, in each case for the full period of the copyright in the MAXX Software.
- 4.2 To the extent that the Third Party Software can be sub-licensed, MAXX grants a non-exclusive, royalty free licence on the terms of the applicable third party's licence to the Client to use the Third Party Software for the full period of the copyright in the Third Party Software.
- 4.3 To the extent that the rights to the Photographs can be sub-licensed, MAXX grants a non-exclusive, royalty free licence to the Client to use the Photographs for the full period of the copyright in the Photographs. The Client will not use any Photographs other than in compliance with the licence terms supplied to the Client.
- 4.4 The Client has no right (and will not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Third Party Software in whole or in part.

5 COMPLIANCE WITH LAWS

- 5.1 Each party will, to the extent necessary in relation to its activities as contemplated by the Specification, comply at all times with all applicable laws and regulations.

6 FEES

- 6.1 Unless otherwise agreed by MAXX in writing, the price for the Services will be as set out in the Specification or, in respect of any additional services, in accordance with its standard charging rates at the relevant time.
- 6.2 Unless expressly stated to be firm, any prices stated or estimated by MAXX are subject to variation by MAXX to reflect increases in costs to MAXX and any variation to MAXX's standard charging rates after the date of the order. MAXX also reserves the right to re-estimate following consultation with or instruction from the Client where the scale or nature of the project is different to that anticipated at the time of the estimate.
- 6.3 Unless otherwise stated in writing by MAXX, all prices stated are exclusive of any value added tax, carriage, insurance, special packaging requirements, disbursements and all other taxes, duties and expenses which the Client will pay to MAXX where applicable at the rate current at the time of invoicing.

7 PAYMENT AND INVOICING

- 7.1 Unless otherwise agreed by MAXX and subject to clause 7.2, all payments will be due in sterling in cash or cleared funds 30 days from the date of invoice and will be paid without any set-off, deduction or counterclaim, failing which MAXX will be entitled to cease all further Services under any or all Contracts with the Client without liability in respect of any loss or damage sustained by the Client as a result.
- 7.2 In respect of a Website, 50% of the amount due is payable in advance of MAXX providing the Services.
- 7.3 Subject as expressly agreed by MAXX or detailed in the Specification, MAXX may invoice the Client at such times as it will in its discretion think fit and reserves the right to raise more than one invoice in respect of the Contract.
- 7.4 Time for payment is of the essence.

8 INCURRING COSTS AND CLIENT APPROVALS

- 8.1 MAXX will not purchase any materials or incur costs not specified in the Specification (other than couriers and special deliveries) chargeable to the Client without the Client's prior agreement. The Client will not in any event unreasonably withhold or delay its approval and will be deemed to approve such purchases and costs if it has not notified MAXX of its non-approval within a reasonable period following receipt of notification of such anticipated purchases and costs.
- 8.2 MAXX may require pre-payment or the establishment of other payment arrangements satisfactory to MAXX before entering into any commitment to third parties in relation to a Contract. In any event, MAXX will invoice the Client for disbursements, purchase of materials and other payments to third parties in accordance with the Specification as the same are incurred.

9 PERFORMANCE AND DELIVERY

- 9.1** Unless expressly agreed to the contrary in writing all times and dates for performance of Services are estimates only given in good faith but without liability on the part of MAXX. Time of performance, despatch or delivery are not of the essence of the Contract.
- 9.2** MAXX will not be liable for any failure of the Services to comply with the Specification caused by any inaccuracies in, or delay in providing, any instructions, purchase order, drawing or specification supplied by the Client.

10 CONFIDENTIALITY

- 10.1** Each party, and its respective employees, agents and sub-contractors will treat as confidential the Software, the Specification and all ideas, designs and creations communicated to it by the other party in connection with the Services (including discussions or presentations leading to the award of the Contract) and will not use or disclose the same without the other party's prior written consent unless and until they enter the public domain otherwise than as a result of breach of this term.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1** After payment in full is received relating to each individual job, MAXX assigns all rights, title and interest (including all intellectual property rights in the Design and/or Website Design and any Content provided by MAXX (but excluding any MAXX Software, Third Party Software and Content provided by third parties) to the Client with full title guarantee so that the Client is the owner thereof. Excluded from this assignment are all bought in services, for example, library images, commissioned photography, strategic planning, market research and copywriting.
- 11.2** All intellectual property rights within the MAXX Software and any modification to it belong and will belong to MAXX, and the Client will have no rights in or to the MAXX Software other than the licence granted under Term 4 and MAXX reserves the right to grant licenses to use the MAXX Software to third parties.

12 SPECIFICATIONS BY THE CLIENT

- 12.1** The Client warrants that so far as it is aware it has notified MAXX in writing of all facts and circumstances and has provided all information necessary to enable MAXX to carry out any design Services or the supply of the Services in accordance with requirements and specifications of the Client.

13 MAINTENANCE

- 13.1** If the Client requires MAXX to perform any maintenance of the Website at any time, MAXX will charge the Client on an hourly basis at its standard charge applicable at the relevant time and will invoice the Client monthly in arrears.

14 DATA PROTECTION

- 14.1** The Client consents to MAXX carrying out a search on the Client, with a credit reference agency.

15 FORCE MAJEURE

- 15.1** MAXX will not be liable for any failure or delay in the performance of its obligations caused by any circumstances outside its reasonable control, including war, strikes, lock-outs, industrial action, shortage of supplies, breakdown, transport delays, accidents, government action, fire, terrorism or criminal acts, failure in information technology or telecommunications services, failure of a third party (including failure to supply data) and industrial action.

16 TERMINATION

- 16.1** Either party may terminate the Contract immediately by serving written notice on the other if:
- (a) the other commits any material breach of the Contract which, if capable of remedy, is not remedied within 30 days of notice from that party specifying the breach and requiring its remedy;
 - (b) the other party convenes a meeting of creditors;
 - (c) a proposal is made in relation to the other party for a voluntary arrangement under Part 1 of the Insolvency Act 1986;
 - (d) a proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) the other party's creditors;
 - (e) the other party is unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
 - (f) a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the assets of the other party; or
 - (g) a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding-up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).
- 16.2** The provisions of Clauses 10 and 11 will survive the termination of the Contract and continue in full force and effect.
- 16.3** Termination will not affect the rights of either party accrued at the date of termination nor will it affect the obligations expressed or clearly intended to continue notwithstanding termination.

17 WARRANTY

- 17.1** MAXX warrants that the Services will be performed using reasonable skill and care.
- 17.2** MAXX warrants that the Design and or the Website Design, the Photographs and the Content, excluding any Photographs and Content provided by the Client do not infringe any Intellectual Property Rights of any third party.
- 17.3** The Client warrants that any Photographs, Content and any trade mark or name provided by it do not infringe any Intellectual Property Rights of any third party.
- 17.4** MAXX gives no warranty in respect of Third Party Software or any hardware supplied to the Client except to the extent that of any warranty provided by relevant supplier.

18 LIABILITY

- 18.1** Subject to conditions 18.2 and 18.3 below:
- (a) MAXX will not be liable for any loss of profits, loss of business, depletion of goodwill, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss or corruption of data or information nor for any special, indirect, economic or consequential loss, costs, damages, charges or expenses; and
 - (b) MAXX'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 will be limited to the price paid for the Services.
- 18.2** Nothing in these terms will exclude the liability of MAXX for death or personal injury resulting from its negligence.
- 18.3** Except as expressly provided in these terms and for any fraudulent misrepresentation, all terms, conditions, representations and warranties (whether express or implied) are excluded from the Contract to the fullest extent permitted by law.
- 18.4** No warranty is given and MAXX will be under no liability in respect of any designs, materials or equipment not produced or designed by MAXX in respect of which the Client will only be entitled to the benefit of any warranty or guarantee given by the manufacturer to MAXX.

19 GENERAL

- 19.1** The Contract constitutes the entire agreement between the parties in connection with the subject matter of the Contract and supersedes all prior oral and written agreements, understandings and correspondence.
- 19.2** If at any time all or any part of one or more of the provisions of these terms is held by any competent authority to be invalid, illegal or enforceable in any respect under any law, the validity and enforceability of the remaining provisions hereof will not in any way be affected or impaired thereby.
- 19.3** The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by anyone else.
- 19.4** The Client will not, without the prior consent of MAXX, assign, transfer, charge, sub-contract or deal in any other matter with all or any of its rights or obligations under the Contract.
- 19.5** All disputes differences or questions at any time arising between MAXX and the Client as to the construction of the Contract or as to any matter or thing arising out of the Contract or in any way connected therewith except any dispute relating in any way to payment will be referred to the arbitration of a single arbitrator who will be agreed between MAXX and the Client or who in the event that the parties fail to reach such agreement, will be appointed at the request of either party by the President for the time being of the Law Society. The arbitration will be in accordance with the Arbitration Act 1996 and any statutory modification or re-enactment thereof for the time being in force.
- 19.6** Any notice to be served under the Contract must be in writing and delivered personally, sent by first class pre-paid post, or sent by facsimile transmission in the case of MAXX to its registered office and in the case of the Client to its address in the Contract or subsequently notified under this condition. Notices given in this manner will be treated as served when delivered, three days after posting (if posted) or one day after transmission (if sent by facsimile transmission).
- 19.7** These Terms and the Contract made between MAXX and the Client will be governed in accordance with the laws of England and the Client hereby submits to the exclusive jurisdiction of the English court.