

## DEFINITIONS

1. In these conditions the following terms shall have the following meanings:  
'Company' Whale Marketing Ltd company number 4921800.  
'Customer' The Customer of the Company.  
'Contract' Any Contract for the sale of Goods and/or Services by the Company to the Customer.  
'Goods' Any Goods forming the subject of this Contract including parts of, or materials incorporated in, them.  
'Services' The services described in the quotation from the Company to the Customer.  
'Price' The price as detailed in the quotation or email provided.

## QUOTATION

- 2.1 Quotations by the Company unless otherwise stated in them shall be open for acceptance within 30 days of the date of the quotation.

## EXISTENCE OF CONTRACT

- 3.1 No Contract shall come into existence until the Customer's order (however given) is accepted by the Company's written acceptance.
- 3.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.
- 3.3 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 on behalf of both parties.

## PRICES

- 4.1 The Price for the Goods and/or Services excludes VAT and any other taxes or duties which will be charged at the rate or rates applicable at the date of invoice from the Company to the Customer.
- 4.2 The Company 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 date of the Contract.

## PAYMENT

- 5.1 Payment terms are 15 days from date of invoice unless otherwise stated on your invoice.
- 5.2 The company reserves the right to invoice in instalments for appropriate projects i.e. all goods or services related work extends spans more than 2 months and any goods or services that require advance payment to suppliers.
- 5.3 The Company reserves the right to charge interest at the maximum rate permitted by law from time to time in force on invoices not paid by the due date (whether before or after Judgment) and to require reimbursement to the Company by the Customer of all costs and expenses (including legal and all costs) incurred in the collection of any overdue amount.
- 5.4 Where, the Price or any part of it is in arrears for more than 7 days and where the Company provides any maintenance or other continuing Services, the Company shall be entitled to suspend all such Services until payment is made in full.
- 5.5 Payment in full is required before any title to any documentation or materials produced passes to the customer.
- 5.6 The Company reserves the right to remove any web pages or collect any brochure materials in the event of non-payment.

## DELIVERY

- 6.1 The Company selects professional suppliers and manages effective supplier relationships; however we cannot be held responsible for any late supplier delivery.
- 6.2 Provided that the Customer provides to the Company all necessary documentation and information when required the Company will use its reasonable endeavours to complete the services or deliver the Goods on or before the dates quoted by the Company but the Customer acknowledges that such completion and delivery dates are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted completion dates.
- 6.3 The Company 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 performance of or repudiate the Contract.

## NATURE & CONTENT OF COPY

- 7.1 The customer must exercise due diligence in its direction to Whale Marketing Ltd regarding preparation of materials and must be able to substantiate all claims and representations. The customer is responsible for all trademarks, service mark, copyright and patent infringement clearances. The customer is also responsible for arranging, prior to publication, any necessary legal clearance of materials we prepare and Whale Marketing Ltd cannot be held responsible for any infringement.

## AMENDMENTS

- 8.1 New work requested by a customer and performed by the company after an estimate/quotation or similar has been approved and/or is undertaken, is considered an amendment. If more than two sets of amendments to final concept artwork is submitted by the customer to the company these amendments and any further amendments will be invoiced at standard hourly rates. If the job changes to an extent that substantially alters the specifications described in the original estimate/quotation, a revised estimate/quotation will then be submitted by the company. Additional fees must be agreed by both parties before any further work proceeds. Customer amendments and other changes requested after final artwork, layouts or mechanicals are completed will be invoiced at standard hourly rates. Customer requested changes will be invoiced additionally and the customer will be notified of any price changes or additional costs in advance of such work commencing.

## SIGN OFF

- 9.1 Every care is taken to ensure that all details, colours, sizes, spelling, grammar and other details are correct. However, the customer is responsible for checking final proofs carefully for accuracy in every respect and Whale Marketing Ltd cannot be held responsible for any errors, omissions or discrepancies. Customers are asked to provide sign off by email wherever possible. In the event that a customer provides an instruction over the phone this is taken as their approval and they are responsible for any errors as a result.

## PRINT & PHOTOGRAPHY

- 10.1 Once a project has been delivered and is fully paid for by customer, Whale Marketing Ltd will assign the reproduction rights of the design for the use(s) as described in the proposal. The rights to all design and art work, including but not limited to photography and or illustration created either by Whale Marketing Ltd or by independent or retained photographers or illustrators, or purchased from a

stock agency on behalf of the client, remain with the individual designer, artist, photographer or illustrator. Unless a purchase of "All Rights" is negotiated and agreed with Whale Marketing Ltd, you may not use or reproduce the design or the images therein for a purpose other than the one(s) originally stipulated. Whale Marketing Ltd is not responsible for any imagery provided by the customer, it is the customer's responsibility to ensure they have the appropriate rights to use the imagery for all marketing purposes and Whale Marketing Ltd cannot be responsible for any costs incurred regarding imagery and associated rights.

Where a customer requires royalty free imagery to be used in marketing on their behalf this cannot be guaranteed by the company and Whale Marketing Ltd cannot be responsible for any errors and resulting cost which will be payable by the customer.

If the customer wishes to use the design created and/or the images within it for any purpose or project, the transfer of rights must be agreed and any additional fees that may apply must be paid before proceeding. If printing or other implementation is done through the customer vendors, you agree to return to us all original mechanicals and artwork (slides, prints, drawings, separations, etc. as applicable) within 2 weeks, and to provide printed samples of each project. 10.2 Any printing quality issues identified must be reported in writing and samples provided within 7 working days of delivery. The company will investigate all quality issues and where a specification has not been followed will contact the supplier to arrange for items to be re-printed. The company will not be liable for any inconvenience caused, and the printer will have a reasonable period of time to complete the re-print. Where a quality issue is not confirmed or only represents 10% of the print provided the customer is required to pay in full for the goods within the date stated on the invoice.

10.3 The customer will accept over-runs or under-runs that do not exceed 10% of the quantity ordered on all jobs. Whale Marketing Ltd will invoice for the quantity delivered within this tolerance. If the customer requires a guaranteed quantity, this must be clearly stated in writing with their approval to proceed so that the quantity & quotation can be increased accordingly.

## TERM

- 11.1 Where the Company under the Contract provides a retainer or other ongoing services to the Customer the Contract shall be for a minimum initial period of 6 months and thereafter run ongoing unless either party shall give to the other not less than 90 days written notice of termination.
- 11.2 If notice of termination is not received as set out in clause 11.1 the Contract for retainer or other ongoing services shall be treated as renewed and all charges in respect of the ongoing services will be payable.

## CLAIMS

- 12.1 The Company shall have no liability with regard to any claim in respect of allegedly defective Goods or Services unless any claim is made in writing to the Company containing full details of the claim within 10 days of delivery of the Goods or provision of the Services.
- 12.2 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition.

## SCOPE OF CONTRACT

- 13.1 Under no circumstances shall the Company have any liability of whatever kind for:
  - 13.1.1 any defects resulting from wear and tear, accident, improper use by the Customer or use by the Customer except in accordance with the instructions or advice of the Company or the manufacture of any Goods or neglect or from any instructions or materials provided by the Customer;
  - 13.1.2 Any Goods which have been altered, modified or repaired except by the Company;
  - 13.1.3 The suitability of any Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company;
  - 13.1.4 Any substitution by the Customer of any materials not forming part of any specification of the Goods agreed in writing by the Company;
  - 13.1.5 any descriptions, illustrations, specifications, drawings and particulars of dimensions submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the Goods and not to form part of the Contract or be treated as representations;
  - 13.1.6 any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made; or
  - 13.1.7 Any variations in the quantities or dimensions of any Goods or changes of their specifications or substitution of any materials if the variation or substitution does not materially affect the characteristics of the Goods, and the substituted materials are of equal quality equal or superior to those originally specified.
- 13.2 For the avoidance of doubt nothing in this Contract shall confer on any third party any benefit or other right to enforce any term of this Contract.

## EXTENT OF LIABILITY

- 14.1 The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or purported performance of or failure to perform the Contract except:
  - for death or personal injury resulting from the Company's negligence; and
  - as expressly stated in these conditions.
- 14.2 If the Customer establishes that any Goods or Services have not been delivered, have been delivered damaged or do not comply with their description the Company shall, at its option, replace with similar goods any Goods which are missing, lost or damaged or do not comply with their description, allow the Customer credit for their invoice value or repair any damaged Goods or Services.
- 14.3 If the Customer establishes that any Goods or Services are defective the Company shall, at its option, replace with similar goods or repair any defective Goods.
- 14.4 The delivery of any repaired or replacement Goods shall be at the Company's premises or other delivery point specified for the original Goods.
- 14.5 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods or Services the Contract shall remain in full force and effect in respect of the other or other parts of the Goods or Service 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 Goods or Services.
- 14.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer in respect of the Goods or Services or if any adjustments, alterations or other work has been done to the Goods or Services by any person except the Company.

14.7 No claim against the Company shall be entertained in respect of any Goods or Services altered by the Company in accordance with any design or specification provided or made by the Customer.

14.8 The Company shall not be liable where any 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 Goods will, if available, be supplied to the Customer at the prices ruling at the date of dispatch.

14.9 Where the Company sub-contracts the whole or part of the performance of this contract it shall not be liable for any failure outside its control in the performance by such sub-contractor of the Company's obligations under this Contract.

14.10 No claim against the Company shall be entertained as a result of the failure for whatever reason of the servers at any third party hosting company. 14.11 In no circumstances shall the liability of the Company to the Customer under this condition exceed the invoice value of the Goods and Services. 14.12 Whale Marketing Ltd are not responsible for any errors, omissions or extra costs that result from faults in the telephone, cable, satellite network or from incompatibility between the sending and receiving equipment. Where applicable, customer shall pay for transmission(s) charges.

## INTELLECTUAL PROPERTY RIGHTS

- 15.1 Unless otherwise agreed in writing all intellectual property rights in the Goods or Services or in any document invention or information made or compiled in connection with this Contract shall be vested in the Company.
- 15.2 The Company grants to the Customer a licence during the term of this Contract to use the intellectual property rights upon the following conditions:
  - 15.2.1 The Customer shall not assign or transfer the said licence without first obtaining the Company's written consent and upon such terms as the Company shall require;
  - 15.2.2 The Customer shall not copy or alter the Intellectual Property Rights
- 15.2.3 The Customer should promptly report to the Company any infringement of the Company's intellectual property rights, which comes to the Customers attention.

## GENERAL

- 16.1 The Company may sub-contract the performance of this Contract in whole or in part.
- 16.2 The Company may at its discretion suspend or terminate the supply of any Goods or Services if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or the Company bona fide believes that any of those events may occur, and in case of termination may not refund any deposit paid.
- 16.3 If the Goods are manufactured or the Services provided in accordance with any design or specification provided or made by the Customer, the Customer warrants that its design or specification and any materials provided by the Customer are not:
  - (a) In breach of any, regulation, code of practice or acceptable use policy; or
  - (b) Abusive, indecent, defamatory, obscene or otherwise offensive; or
  - (c) In breach of confidence, copyright or other intellectual property rights, privacy or any other right of any third party the Customer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including, but not limited to, any claim, whether actual or alleged that the design or specification infringes the rights of any third party.
- 16.4 Except for any of the following which is expressly agreed to be included in the Goods or Services all patterns materials drawings specifications and other data provided by the Company 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 Company.

## CONFIDENTIALITY

- 17.1 The Customer shall not at any time whether before or after the termination of the Contract divulge or use any unpublished technical information deriving from the Company or any other confidential information in relation to the Company's affairs or business or method of carrying on business.

## PROMOTION

- 18.1 Whale Marketing Ltd reserve the right to use, distribute or publish any work created for the customer, as promotional samples for our portfolio, brochures, slide presentations and similar promotional media.

## CANCELLATION

- 19.1 Orders for Goods or Services will be charged in full unless written notice of cancellation is received by the Company not later than 30 days before the expected delivery date quoted in the Company's order acknowledgement.
- 19.2 If written notice of cancellation is received in accordance with clause 17.1 above not later than 30 days before the expected delivery date the Company reserves the right to require the Customer to pay the Company for work carried out by the Company in part performance of the Order for Goods or Services and for any Goods, Services or components ordered by the Company from its suppliers in relation to the Order for Goods or Services.

## FORCE MAJEURE

- 20.1 The Company shall not be liable for any failure in the performance of any of its obligations under this Contract caused by factors outside its control.

## LAW AND JURISDICTION

- 21.1 The 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 Company invokes the jurisdiction of the courts of any other country.

## NOTICES

- 22.1 Any notice given under this Contract shall be in writing and may be served:
  - (i) Personally,
  - (ii) By registered or recorded delivery mail,
- 22.2 Each party's address for the service of notices shall be the address set out in the quotation and or confirmation of order.
- 22.3 The notice shall be deemed to have been served:
  - (i) If it was served in person at the time of service,
  - (ii) If it was served by post, 48 hours after it was posted.