



TERMS & CONDITIONS

These Terms and Conditions apply to the provision of all Services by us, **Velocity Design & Marketing, of Top Floor, Brook House, 13 Brook Street, St Neots, Cambs PE19 2BP** ("the Agency/we/us/our").

1. Definitions and Interpretation:

- 1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Client/You/Your" means you, the individual, firm or corporate body purchasing the Services. Where an individual is entering into this Contract on behalf of a business, the individual confirms they have the authority to do so and to contractually bind that business and the business shall be the Client in the context of this Contract;

"Contract" means the contract formed as detailed in clause 2, which includes the acceptance of these Terms and Conditions;

"Quotation" means the written quotation provided by us to you, which unless otherwise stated, remains open for acceptance for a period of 14 days and constitutes our entire scope of works; and

"Services" means the design, branding, web design, photography, social media management and/or any other services provided by us to you.
- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
 - 1.2.1 "writing" and "written" includes emails and similar transmissions;
 - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
 - 1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions as may be amended or supplemented at the relevant time;
 - 1.2.4 a clause is a reference to a clause of these Terms and Conditions;
 - 1.2.5 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon their interpretation. Words imparting the singular number shall include the plural and vice versa. References to any gender shall include the other gender. References to persons shall include corporations.
- 1.4 No terms or conditions stipulated or referred to by you in any form whatsoever shall in any respect vary or add to these Terms and Conditions unless agreed by us in writing.

2. The Contract

- 2.1 We will provide you with a written Quotation for our Services. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between you and us, and includes the acceptance of these Terms and Conditions, which will apply between us.
- 2.2 You are responsible for the accuracy of any information you submit to us and for ensuring that our Quotation reflects your requirements. Our Quotation is based on your brief and any other information provided to us at the time we prepare it. If any errors or discrepancies become evident, we reserve the right to make adjustments to it.
- 2.3 You agree to provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services. However, any timescales we provide are a guideline only and are not of the essence of the Contract.

3. Branding, Graphic and Web Design:

The following clause applies if we are providing graphic design, branding and/or web design Services only.

- 3.1 We will provide you with design concept(s) as necessary, based on the brief you have given to us. We will require your input and feedback on these concepts, as we will work on your preferred concept through to completion.
- 3.2 We will provide you with design proofs, which must be signed off by you in writing. It is your responsibility to check for mistakes, including spelling mistakes, at this stage and we accept no responsibility for the same.
- 3.3 We will accommodate up to three sets of changes to your preferred concept without charge. If you require more than three sets of changes, any additional changes may be chargeable at our discretion.
- 3.4 Any alterations required after approval of the final design, any changes to the brief or any additional visits required above the allowance included for in the Quotation will be chargeable at our standard rate applicable at the time.
- 3.5 If we are providing web design services, unless otherwise agreed, we will not be responsible for the building of the website and you will be required to engage a separate company for this.
- 3.6 You will be required to send us any information we need to provide our Services, in a timely manner. This includes, but is not limited to, existing logos, copy, graphics and pantone colour references, in the agreed format.
- 3.7 We will use our own exclusive judgement when providing the Services and deciding upon artistic and other subjective factors. We will not accept liability, and no refunds will be offered, in the unlikely event that you are dissatisfied due to a matter of personal taste.

4. Photography:

The following clause applies if we are providing photography Services only.

- 4.1 You are required to provide us with as much information as possible about the photo shoot when making your initial enquiry with us, including any specific events, people or compositions you wish for us to capture.
- 4.2 Any such specifics we may discuss are a guide only and are dependent on the circumstances, such as timing, weather, venue issues, willingness of participants, and delays.

- 4.3 Please also bear in mind that impractical layout and low lighting could significantly affect the quality of the photos.
- 4.4 It is your responsibility to arrange hire and access to the venue at the times and date(s) agreed. It is also your responsibility to book and advise the venue in advance that photography is to take place and to post disclaimers at the venue highlighting that it is being used for photography, where necessary.
- 4.5 We will use all reasonable endeavours to ensure a successful outcome, however we cannot guarantee the willingness or quality of performance of any featured participants.
- 4.6 We will use our own exclusive judgement when selecting equipment and deciding upon artistic factors such as composition, lighting and style.
- 4.7 We will accommodate minor editing changes before the final version is issued to you, without charge. Any other changes required will be chargeable at our current rate in effect at the time. We also reserve the right to charge additional costs if the original brief changes at any time.

5. Social Media Management and other ongoing Services:

The following clause applies if we are providing social media management or other ongoing Services only.

- 5.1 The Contract for any ongoing Services will be for an initial term of 3 months and thereafter, it will be automatically renewed, with the exception of the price, on the same terms and conditions as set out in this Contract on a rolling 3 month basis unless a written notice to terminate is given by either party in accordance with clause 9 below. We will notify you of any such price increase in accordance with these terms and conditions.
- 5.2 In order to provide our Services, we will need access, approvals and logins to your social media sites, as necessary. Please provide this to us on acceptance of our Quotation to avoid delays.
- 5.3 You will be required to provide us with suitable and sufficient information so we can create content to post. We will draft a plan of the number of posts, time to be posted and wording of posts, which must be approved by you in writing before we upload them. We cannot not be held liable for any delays in the Services where this is due to a lack of information or delay in approval.
- 5.4 Where we have agreed to carry out pay-per-click advertising campaigns on your behalf, you will be required to agree to the relevant advertising campaign website's terms and conditions and a separate contractual relationship will be created between you and the campaign website.

6. Fees

- 6.1 Unless otherwise agreed by us in writing, our payment terms for our one-off Services detailed in clauses 3 and 4 are as follows:
 - 6.1.1 50% of the quoted fee is due upon acceptance of our Quotation. Orders will not be deemed confirmed until the deposit is paid in full. This deposit is non-refundable;
 - 6.1.2 50% of the quoted fee will be invoiced on completion of the Services, or after a draft version has been issued to you and we have received no communication from you within a reasonable period of time, whichever is the sooner.
- 6.2 Notwithstanding the above, we reserve the right to charge additional interim progress payments as the works progress. We also reserve the right to request 100% of the quoted fee up front at our sole discretion. In either event, we will notify you accordingly in advance.
- 6.3 Payment for our ongoing Services detailed in clause 5 is due on a monthly basis, in advance.
- 6.4 Our time for our Services is calculated in minimum units of 30 minutes and will be rounded up to the nearest 30 minute interval.
- 6.5 All invoices are payable within 14 days from the date of invoice, unless otherwise specified.
- 6.6 You agree to pay for mileage, if we are required to attend meetings, together with any additional services provided by us that are not specified in the Quotation. These additional services will be charged in accordance with our current rate in effect at the time or such other rate as may be agreed.
- 6.7 All sums payable by either Party are exclusive of VAT (where applicable) or any other taxes on profit, for which that Party shall be additionally liable. All payments are to be made in pounds sterling without any set-off, withholding or deduction except such amount (if any) of tax as you are required to deduct or withhold by law.
- 6.8 The time of payment shall be of the essence. If you fail to make any payment by the due date then, without prejudice to any right which we may have under to any statutory provision in force from time to time, we shall have the right to suspend the Services and charge you interest at a rate of 8% per annum above the Bank of England base rate from time to time, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall be calculated on a daily basis and will accrue after as well as before any judgment.

7. Your Responsibilities

- 7.1 You agree, where applicable, to:
 - 7.1.1 provide us with any information, advice and assistance as we may reasonably require within sufficient time to enable us to perform the Services;
 - 7.1.2 respond to communications from us and provide approvals in a timely manner;
 - 7.1.3 nominate a decision-maker to act as your representative to liaise with us regarding the Services; and
 - 7.1.4 obtain and maintain all necessary licences, permissions and consents in connection with the Services.
- 7.2 If you fail to meet any of the provisions of this clause 7, without limiting our other rights or remedies, we will:
 - 7.2.1 have the right to suspend performance of the Services until you remedy the default;
 - 7.2.2 not be held liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and





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7.2.3 be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from your default.

8. Variation and Amendments

- 8.1 If you wish to vary the Services to be provided, please notify us as soon as possible. We will endeavour to make any required changes and any additional costs incurred by us as a result will be invoiced to you.
- 8.2 If for any reason we have to make any changes relating to the provision of the Services, we will notify you immediately. We will endeavour to keep such changes to a minimum and will seek to offer you arrangements as close to the original as is reasonably possible in the circumstances.
- 8.3 Any agreed variation or amendment will be carried out in accordance with these Terms and Conditions and any price increase required as a result of an agreed variation or amendment will be payable in accordance with the terms for payment above.

9. Cancellation and Termination

- 9.1 Subject to clause 9.3, any one-off services as detailed in clauses 3 and 4 cannot be cancelled after the Contract is formed. In the event of cancellation, you will be required to pay the total quoted fee, which will become immediately due and payable. Upon receipt of payment, we will hand over all works completed by us up to the date of cancellation in relation to the Contract.
- 9.2 Either Party has the right to terminate the ongoing Services detailed in clause 5 by the giving of 3 months' written notice whereby at the end of the term, there will be no continuing liability by either Party.
- 9.3 Either Party has the right to terminate the Services immediately if the other Party:
- 9.3.1 has committed a material breach of this Contract unless such breach is capable of remedy, in which case the right to terminate immediately will be exercisable if the other Party has failed to remedy the breach within 14 days after a written notice to do so; or
- 9.3.2 goes into bankruptcy or liquidation either voluntary or compulsory (save for the purposes of bona fide corporate reconstruction or amalgamation) or if a receiver is appointed in respect of the whole or any part of its assets.
- 9.4 In the event of termination for your default, all payments required under this Contract shall become due and immediately payable.
- 9.5 Any and all obligations of the Parties which either expressly or by their nature continue beyond the termination, cancellation or expiration of this Contract shall survive termination under this clause 9 on a pro-rata basis.

10. **Confidentiality:** Each Party undertakes that throughout the duration of the Contract, the Parties may disclose certain confidential information to each other. Both Parties agree that they will not use the confidential information provided by the other, other than to perform their obligations under this Contract. Each Party will maintain the confidential information's confidentiality and will not disseminate it to any third party, unless authorised by the other Party in writing.

11. Format

- 11.1 Any designs or other works created by us will be kept on file for a period of 1 year from completion of the Services, unless otherwise agreed in writing. After this time, they will be securely and irretrievably deleted from our system. If you require additional copies after the data has been deleted, you will need to recommence the Quotation process with us.
- 11.2 We provide our designs, documentation or other media in the format as may be agreed. The original source files for any designs we create remain our property at all times. If additional copies or specific formatting is needed, we reserve the right to apply additional charges.

12. **Literature and Representations:** Any marketing literature is presented in good faith as a guide to represent the Services offered and does not form a part of the Contract. None of our employees or agents are authorised to make any representation concerning the Services unless confirmed by us in writing. In entering into the Contract, you acknowledge that you do not rely on and waive any claim for breach of any such representations, which are not so confirmed.

13. Intellectual Property

- 13.1 The copyright in any Services provided by us will remain our property until we have received payment for the total Contract value in full. Provided all payments due under the Contract have been received by us in full, we will grant you ownership of the works produced under the Services.
- 13.2 Ownership will apply only to the final design and will not extend to any draft concepts, images, designs or other material viewed by you. These cannot be used without our express permission. We reserve the right to reuse these other designs at our discretion.
- 13.3 We reserve the right to use any of the Services provided by us, together with your company name, in any advertising or promotional material, on our website, in publications, print, or for any other purpose required by us.
- 13.4 Your use of and rights in any materials produced by us will be automatically revoked if you breach any of these Terms and Conditions or if the Contract is cancelled or terminated in accordance with clause 9 above. We reserve the right to take such actions as may be appropriate to restrain or prevent infringement of our intellectual property rights.
- 13.5 You warrant that any logo, design, image, document or instruction supplied or given by you will not cause us to infringe any intellectual property rights of any third party (including, but not limited to, any letter patent, registered design or trade mark) in the execution of our Services. You will indemnify us against all loss, damages, costs and expenses awarded against us or incurred by us in settlement of any claim for infringement of any patent, copyright, design, licence, trademark or any intellectual property rights which results from our use of your information.

14. Data Protection

- 14.1 Both parties agree to comply with all applicable data protection legislation including, but not limited to, the General Data Protection Regulation 2016, and any subsequent amendments to it.
- 14.2 If you are providing us with the personal data of any other person (if for example, we are running campaigns on your behalf), it is your responsibility to obtain the consent of those persons to pass their data to us, as a third party. We will only process, store and hold such data in order to perform our obligations under the Contract and will not use it for any other purpose.

15. **No employment:** Nothing in the Contract will render or be deemed to render us an employee or agent of yours or you an employee or agent of ours.

16. Assignment and Sub-Contracting

- 16.1 You are not entitled to assign the benefits under the Contract.
- 16.2 We may sub-contract the performance of any of our obligations under the Contract without your prior written consent. Where we are sub-contracting the performance of any of our obligations under the Contract to any person, we shall be responsible for every act or omission of the sub-contractor as if it were an act or omission of our own.

17. Liability and Indemnity

- 17.1 Except in respect of death or personal injury caused by our negligence, we will not by reason of any representation, implied warranty, condition or other term, or any duty at common law or under the express terms contained herein, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by our servants or agents or otherwise) in connection with the performance of our obligations under the Contract.
- 17.2 All warranties or conditions whether express or implied by law are expressly excluded to the full extent permitted by law.
- 17.3 In the event of a breach by us of our express obligations under these Terms and Conditions, your remedies will be limited to damages, which in any event, shall not exceed the fees and expenses paid by you for the Services.
- 17.4 We may provide professional advice and recommendations in relation to the Services but we cannot accept responsibility for any actions taken as a result of such advice or recommendations, nor can we guarantee the success or outcomes of any marketing campaign or any of the other Services provided. Further, we shall not be liable for any consequences should any professional advice not be taken.
- We may provide introductions or referrals to other companies, however, under no circumstances shall we be liable for the actions or lack of actions of said other companies.

18. **Force Majeure:** Neither Party shall be liable for any failure or delay in performing their obligations under the Contract where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event beyond the control of the Party in question.

19. **Waiver:** No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

20. **Severance:** The Parties agree that, if one or more of the provisions of these Terms and Conditions are found to be unlawful, invalid or otherwise unenforceable, that/those provisions will be deemed severed from the remainder of these Terms and Conditions (and the Contract, as appropriate). The remainder of these Terms and Conditions shall be valid and enforceable.

21. **Third Party Rights:** No part of the Contract is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

22. **Notices:** Notices will be deemed to have been duly received and properly served 24 hours after an email is sent or three working days after the date of posting of any letter. In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that it was properly addressed to the address provided, stamped and placed in the post and in the case of an email, that it was sent to the specified email address of the addressee.

23. Law and Jurisdiction

- 23.1 These Terms and Conditions and the relationship between you and us (whether contractual or otherwise) will be governed by, and construed in accordance with, the laws of England and Wales.
- 23.2 Any dispute, controversy, proceedings or claim between you and us relating to the Contract or these Terms & Conditions (whether contractual or otherwise) will be subject to the jurisdiction of the courts of England and Wales.

