

## Macian Web Design Standard Terms and Conditions of Business

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).

**Commencement Date:** the date upon which the Customer accepts the Supplier's Quotation or the Supplier issues a written acknowledgement and acceptance of the Customer's order in accordance with condition 2.2 or failing either of the above the Supplier starting to provide the Development Services.

**Contract:** Quotation and these Conditions (unless varied in writing in accordance with these Conditions).

**Customer:** the person, firm or company who purchases Development Services from the Supplier.

**Customer's Equipment:** any computers, servers equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Development Services.

**Customer's Manager:** the Customer's manager for the Project Development Services, appointed in accordance with condition 6.1.

**Deliverables:** any deliverables specified in the Project Plan.

**Development Services:** software development, procurement, consulting and computer programming services for the purpose of creating the Web-site Pages for use on the Worldwide Web service of the internet as set out in the Project Plan.

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**In-put Material:** the in-put materials specified in the Project Plan.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre-existing Materials:** all Documents, information and materials provided by the Supplier relating to the Development Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

**Price:** the total price for provision of the Development Services, Deliverables as quoted in the Project Plan together with any price changes pursuant to condition 7.4

**Project:** project as described in the Project Plan.

**Project Milestones:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.

**Project Plan:** the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities for the provision of the Development Services as set out in the Quotation.

**Quotation:** the Supplier's estimate and scope of works setting out the (without limitation) Project Plan, Payment Terms and Price.

**Supplier:** Macian Web Design

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Development Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**Supplier's Manager:** the Supplier's manager for the Project appointed under condition 5.3.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

**Web-site Pages:** the www site comprising all pages including graphics audio visual effects and other digital content as detailed in the Supplier's Quotation.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 A reference to **writing** or **written** includes faxes and e-mails.
- 1.7 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.8 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.9 References to conditions and schedules are to the conditions and schedules of the Contract.

## 2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
  - (a) apply to and be incorporated into the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 . The contract will be established on the return to the Supplier from the Customer of a signed copy of the Quotation accepting and acknowledging the contents therein or shall be deemed to be established by the Buyer continuing to instruct or engage the Supplier in respect of the Development Services. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition **Error! Reference source not found.** Any Quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

### **3. COMMENCEMENT AND DURATION**

3.1 The Development Services supplied under the Contract shall be provided by the Supplier to the Customer from the Commencement in accordance with the Project Plan.

3.2 The Development Services supplied under the Contract shall continue to be supplied until the Project is completed in accordance with the Project Plan unless the Contract is terminated in accordance with condition 12.

### **4. PROJECT PLAN**

4.1 The Supplier shall in its Quotation provide the Customer with a Project Plan, setting out the requirements and specifications of the Development Services which it is supplying to the Customer, including a description of what work is to be done, dates by which it is estimated to be started and finished, Deliverables, In-put Materials, Price and payment schedule.

4.2 Once the Project Plan has been prepared by the Supplier in accordance with condition 4.1, no amendment shall be made to it except in accordance with condition 7 and condition 14.

### **5. SUPPLIER'S OBLIGATIONS**

5.1 The Supplier shall use reasonable endeavours to provide the Development Services, and to deliver any Deliverables to the Customer, in accordance in all material respects with the Project Plan.

5.2 The Supplier shall use reasonable endeavours to meet any performance dates or Project Milestones specified in the Project Plan, but any such dates shall be estimates only and time shall not be of the essence of this the Contract.

5.3 The Supplier shall appoint the Supplier's Manager who shall have authority contractually to bind the Supplier on all matters relating to the Development Services. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's Manager throughout the term of the Contract, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

5.4 The Supplier shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under condition 6.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

### **6. CUSTOMER'S OBLIGATIONS**

6.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Development Services and appoint the Customer's Manager in relation to the Development Services who shall have the authority contractually to bind the Customer on matters relating to the Development Services;

- (b) provide, for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as requested by the Supplier;
- (c) provide, in a timely manner, such In-put Material and other information as the Supplier may request and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Development Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Development Services at those premises, and informing the Supplier of all of its obligations and actions under this condition 6.1(d);
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Development Services and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Development Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment in all cases before the date on which the Development Services are to start; and
- (h) keep, maintain and insure the Supplier's Equipment in good condition and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation;

6.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

6.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

## **7. CHANGE CONTROL**

7.1 If either party wishes to change the scope or execution of the Development Services, it shall submit details of the requested change to the other in writing.

7.2 If either party requests a change to the scope or execution of the Development Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of the Contract.

- 7.3 The Supplier may, from time to time and without notice, change the Development Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Development Services. The Supplier may, from time to time and subject to Customer's prior written consent, which shall not be unreasonably withheld or delayed, change the Development Services, provided that such changes do not materially affect the nature or quality of the Development Services and, where practicable, it will give the Customer at least 1 months' notice of any change.
- 7.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

## **8. CHARGES AND PAYMENT**

- 8.1 The total price for the Development Services shall be the amount set out in the Project Plan. The total price shall be paid to the Supplier (without deduction or set-off) in instalments, as set out in the Project Plan. The Supplier shall invoice the Customer by email or post for the charges that are payable, together with VAT, where appropriate. The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within the time period specified in the Project Plan or, if not specified, within 28 days of receipt.
- 8.2 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Lloyds TSB Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
  - (b) claim compensation arising out of late payment under s. 5 of the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (c) suspend all Development Services until payment has been made in full.
- 8.3 Time for payment shall be of the essence of the Contract.
- 8.4 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 8.4 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 8.5 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 All Intellectual Property Rights supplied by the Customer and used by the Supplier in the provision of the Development Services, will remain the Customer's property. The Customer will indemnify the Supplier on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the use of the Customer's

supplied Intellectual Property Rights in provision of the Development Services or the Supplier's possession of the Customer's Intellectual Property Rights infringes the intellectual property rights of any third party.

- 9.2 All Intellectual Property Rights provided by the Supplier including HTML code, graphics, photographs and text will remain the property of the Supplier.
- 9.3 On payment in full of the Price, the Supplier grants to the Customer a non-exclusive, non-transferable right to use the Website Pages and the Deliverables on any processor owned or controlled by the Customer.

## **10. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

- 10.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents or sub-contractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 10.2 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain as between the Supplier and the Customer the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 10.3 This condition 10 shall survive termination of the Contract, however arising.

## **11. LIMITATION OF LIABILITY - THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION**

- 11.1 This condition 11 set out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of the Contract;
  - (b) any use made by the Customer of the Website Pages, the Development Services, the Deliverables or any part of them; and
  - (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these Conditions limits or excludes the liability of the Supplier:
- (a) for death or personal injury resulting from negligence; or

- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- (c) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

11.4 Subject to condition 11.2 and condition 11.3 the Supplier'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 shall be limited to the price paid for the Development Services or the sum for which the Supplier carries comprehensive insurance cover to meet any claim, whichever sum is the greater. For the avoidance of doubt, should the Supplier not have adequate insurance cover or such insurance is invalidated for whatever reason, then the total liability shall be the price paid for the Development Services.

## **12. TERMINATION**

12.1 Subject to condition 12.3, the Contract shall terminate automatically on completion of the Project in accordance with the Project Plan.

12.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of this Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001); or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Development Services supplied but for which no invoice has been submitted, and as a pro rata basis for Development Services which have not been supplied but upon which work has commenced the Supplier may submit an invoice, which shall be payable immediately on receipt;

- (b) the Customer shall, return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

**13. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, failure of computer hardware or software, fire, flood, storm or default of suppliers or sub-contractors.

**14. VARIATION**

Subject to condition 4 and condition 7 , no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**15. WAIVER**

- 15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**16. SEVERANCE**

- 16.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 16.3 The parties agree, in the circumstances referred to in condition 16.1 and if condition 16.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of the Contract shall be suspended while an attempt at such substitution is made.

**17. STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

**18. ASSIGNMENT**

18.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**19. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**20. RIGHTS OF THIRD PARTIES**

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.

**21. NOTICES**

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the postal address, email address or fax number, given in the Contract (or such other postal address, email address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by email, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of email, at the time the email arrives in the recipient's email inbox, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 21 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted or, in the case of email that the notice was sent to the email address of the party.

**22. GOVERNING LAW AND JURISDICTION**

22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales save that:

- a) the Supplier shall have the right to sue to recover its fees in any jurisdiction in which the Customer is operating or has assets, and
- b) the Supplier shall have the right to sue for breach of his Intellectual Property Rights and other proprietary information and trade secrets ("**IPR**") (whether in connection with the Contract or otherwise) in any country where it believes that infringement for breach of the Contract relating to its IPR might be taking place. For the avoidance of doubt, the place of performance of the Contract is agreed by the parties to be England.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.