

TERMS & CONDITIONS OF BUSINESS



Definitions

In these Terms & Conditions of Business, the following words and phrases have the following meanings:-

The Company' – ChilliApple Ltd, registered office being Medway Innovation Centre, Marconi Way, Rochester, Kent ME1 2XX

'The Client' - the person, firm or body requiring the products or services from the Company and engaging business relations through verbal, electronic and/or written arrangements.

'Confidential Information' shall mean the web site, the software, the services provided by ChilliApple Ltd pursuant to this agreement and all information of a proprietary and/or confidential nature regarding the Client's business and or/ the Client's employees whether such information be oral, written, computerised or otherwise.

'Contract' - the request by the client to supply products and/or services from the Company through verbal, electronic and/or written communication.

'Date of Development Completion' shall mean the date upon which the website and software development work is completed in accordance with the Functionality Document and the website and software is released to the Client for testing.

'Date of Going Live' shall mean the date upon which the website and software are fully operational in accordance with the Functionality Document.

'Date of Purchase' shall mean the date upon which the client requested the Company to supply products and/or services from the Company through verbal, electronic and/or written arrangements.

'Project' - means the design and installation of the Website and the development and installation of the software as envisaged in these Terms & Conditions of Business and as more fully detailed in the Functionality Document.

'Service' - the Service requested of the Company by the Client.

'The Estimate' means the document outlining the price of the products or services supplied to the Client by the Company based on the Web Brief. This document will include an Estimate of the overall time required to complete the project, including checking/approval time by all parties.

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'The Quotation' means the document detailing the price of the products or services supplied to the Client by the Company based on the Functionality Document.

'The Web Brief' means the document which sets out the clients requirements for the design and development of the website and software.

'The Functionality Document' means the document detailing the parameters of the Project and the functional specifications for the website and software. This document will include detailed timelines for the Project including checking/approval periods and payment schedule.

'The Software' means the computer software to be developed for the Client by the Company for the performance of the functions set out in the Functionality Document and consisting of the totality of the processes, routines, logic used in processing information expressed in the form of machine executable codes and including the source codes, object codes and all upgrades to the software and any accompanying documents (whether electronic or otherwise)

'The Website' means the Website designed and created pursuant to this agreement and the Functionality Document, including but not limited to any logo, service names, source codes, object codes, programming, text, graphics, icons, designs, colours, layouts, images, photographs, animations, video, audio, music, text and applets incorporated therein, all upgrades to the Website and any accompanying documents (electronic or otherwise).

'Upgrades' means all alterations, patches and amendments as the case may be, which are required to enable the software and the Website to comply with the terms of the Functionality Document to comply with the terms of the Product Specification but which are not enhancements nor material deviations from the Functionality Document.

General

These terms apply to each Contract between the Company and the Client and are deemed to be acceptable by the Client by virtue of its instruction to the company, verbal, written or electronic to proceed with supplying the product or service.

The client requests the company to supply standard products and/or web design services and/or development services and/or web hosting services and/or support services. Dependent upon the combination of products and/or services supplied the following terms will apply:

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Supply of Web Design and Development Services

The Client contracts with the Company to supply Web Design and Development Services, who accepts the engagement in accordance with the Functionality Document subject to the provisions below. The Client shall only be entitled to reject the Web Design Services and/or Development Services upon the basis that the website and software do not meet the Functionality Document.

The Client undertakes to:-

- a) Render such assistance to the Company as the Company may reasonably require in order to meet the project objectives
- b) Provide such information which is in the Client's possession and that the Company reasonably requires to perform in terms hereof by the dates agreed in the Functionality Document.
- c) Make available to the Company free of charge access to the Client's premises and use of such computing and office facilities as are reasonably necessary for the performance of the Company's obligations under the Terms & Conditions of Business
- d) Make available to the Company free of charge such of the Client's staff as shall be reasonably necessary for the performance of the Company's obligations under this Agreement.
- e) Provide a full and final version of the copy, logos and other materials required by the date indicated within the Functionality Document.

Once the Functionality Document has been agreed and signed by both parties any changes to the design or functionality required for the site will be subject to additional charges at the Company's prevailing hourly rate.

Once the Design of the Website has been approved and signed-off, any changes to the design and subsequent build of the site will be subject to additional charges at the Company's prevailing hourly rate.

Once the copy, logos and images have been received and implemented within the Website, any changes to will be subject to additional charges at the Company's prevailing hourly rate.

Where the client requires and the Company provides access to the website and/or software other than through administrative functions provided, the Company cannot be held responsible for any damage caused by the client carrying out access via other methods.

The Company reserves the right to charge for rectifying any damage caused by the Client to the website and/or software.

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Terms of Contract and Payment Terms

In consideration of the product and or services supplied by the Company, the Client shall pay to ChilliApple the amount as detailed on the Estimate or Quotation.

In respect of web design and development services the Estimate will only be considered an Estimate until the Functionality Document has been completed and agreed. The final project price, should this differ from the Estimate price will be provided to the Client for approval by the Company at that point in the form of a written Quotation.

Payment for a Project comprising web design services and/or development are payable as follows:

Upon Date of Acceptance/Purchase, 30% of Total Project Price

Upon Completion of Web Design and/or Functionality Document, 30% of Total Project Price

Upon Date of Development Completion, balance of Total Project Price including any other costs

The Company reserves the right to part-invoice the balance of the Total Project Price as the Company deems fit if the project exceeds 6 months. Cleared funds will be required within 14 days of the invoice date. If the invoice remains unpaid after this time, The Company reserves the right to stop design or development until such time as cleared funds are received.

The dates that payments will be required will be detailed in the timelines which will form part of the Functionality Document.

If the payment dates are delayed due to the Client delaying the Project, the Company will require payment of the next payment due upon demand. Under these circumstances, the Company also reserves the right to charge for idle resource that could not be re-deployed as a result of the Client delay.

Payment and Terms for a Project comprising individual products and/or services and/or products and services which fall outside of web design and development will be agreed by all parties in advance of commencement and/or supply.

The Company reserves the right to charge reasonable Project expenses to the client in respect of the Client carrying out its obligations under the Contract. Expenses shall include but not be limited to travelling expenses, accommodation expenses and subsistence.

The Company reserves the right to charge for consultancy time and expenses if required to participate in meetings with the Client and/or third parties that are not agreed as part of the Contract between the two parties.

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All payments are calculated inclusive of VAT at the applicable rate. Invoices are payable by the invoice due date. Without prejudice to any other rights or remedies available to the Company, the Company reserves the right to charge interest on payments unpaid within 14 days of the invoice date. A rate of 4% above Barclay's base lending rate (or such other rate as may substitute the same) will apply calculated on a day to day basis on the outstanding amount (both before and after any judgment) as from the time of the invoice until the outstanding amount is paid in full.

Copyright, Patents, Designs and Trademarks

All rights to the website and software for development and design vest solely with the Client when payment terms are fully complied with and all outstanding fees are settled.

As soon as practicable after the Company reaches the Date of Development Completion, the Company shall deliver to the Client, the website and software with any programming documents that accompany same, including all source codes and object codes for the design and development and the underlying programming thereof.

Warranties and Warranty Period

The Company warrants in favour of the Client that it has developed and created the website and software without infringing any of the intellectual property rights, proprietary rights, title, trademark, copyright, patent or design rights of any third party in so doing.

The Client warrants in favour of the Company that materials including but not limited to logos, text, graphics, icons, images, photos, animations, video, audio, music and text supplied to the Company by the client do not infringe any of the intellectual property rights, proprietary rights, title, trademark, copyright, patent or design rights of any third party.

The Client warrants that any personal data held on individuals on the Website is held with the individual's knowledge and is subject to the provisions of the Data Protection Act, with whom the Client holds current registration.

Following the Date of Going Live a Warranty period of 30 days will apply. During this period the Client will verify that the website and software are fit for the purpose for which they were designed as set out in the Functionality Document.

The Company will rectify any anomalies in order to ensure that the website and software meet the terms of the Functionality Document during this period. Any rectifications after this period will either be fixed subject to charges at the Company's prevailing hourly rate for creative and programming services.

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Limitation of Liability

The Company, its employees or agents shall not be liable for any consequential damage or loss (including, without limitation, loss of profits or business opportunity) caused to, or suffered by, the client as a result of, or arising out of, any use of, or any fault, defect or error in the services or operation of the website or software.

Subject to the above paragraph, the Company, its employees and agents total aggregate liability in respect of any and all claims (whether arising out of one or more incidents and whether in respect of the negligence of the Company), its employees or agents, by the Client arising out of or in respect of the services or the use of either of them (other than in respect of death or personal injury caused by the negligence of the Company, its employees or agents) shall in no circumstances exceed the total charges paid by the client in respect of the original products and/or services provided. This Clause shall survive termination of this agreement for any reason whatsoever.

Confidentiality

The Company shall keep secret and confidential the Confidential Information and not disclose it to any third party. The Company may disclose the Confidential Information only:

- a) with the Client's prior agreement as to manner, content and degree of disclosure, and
- b) if required by law, with the Client's prior agreement as to manner, content and degree of disclosure

Proper Use

The client agrees that the website and software produced shall only be used for lawful purposes and shall not use the service for the transmission of any material which is in violation of any law or regulation, or which is defamatory, menacing, obscene or in breach of third party intellectual property rights (including copyright) or in breach of trade secrets.

Termination

The contract may only be terminated by either party where there is a material breach in the Contract and the party in breach fails to remedy the same within 14 days of written notice demanding such remedy. In such cases the contract will be terminated immediately without further notice.

If a Client decides to terminate the Project or to cease work on the Project, all payments signed for in the Estimate and/or Quotation and/or agreed to in the Functionality Document will become immediately due. No refund or part-payment will apply in the result of a Project terminated or cancelled by the Client.

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Force Majeure

A party to the Terms & Conditions of Business shall not be liable for any delay in or failure of performance if:

- a) that delay or failure arises from circumstances or events beyond that party's reasonable control or foresight ('a Force Majeure Event'); and
- b) it has taken all reasonable measures with the object of avoiding or minimising the delay or impact of the Force Majeure Event; and
- c) the party claiming the benefit of a Force Majeure Event has promptly given notice to the other party of the nature of the Force Majeure Event, an estimate of the duration of the Force Majeure Event and the probable extent to which that party shall be unable to observe or perform its obligations under these Terms & Conditions of Business.

Notices

All notices, requests, demands, consents, approvals or other communications (each a 'Notice') in relation to either party or otherwise shall be in writing and shall be delivered by electronic mail or prepaid signed-for post or in person or transmitted by facsimile to the addresses or facsimile numbers set out in the party's details or such other address or facsimile number as the addressee may specify.

Severability

Any provision of these Terms & Conditions of Business which is prohibited or unenforceable in any applicable jurisdiction shall be ineffective in that jurisdiction to the extent of the prohibition or unenforceability. Such prohibition or unenforceability shall not invalidate the remaining provisions of these Terms & Conditions of Business nor affect the validity or enforceability of that provision in any other jurisdiction.

Entire Agreement

These Terms & Conditions of Business shall constitute the entire agreement between the parties in relation to the contract to purchase and/or rent and supply products and/or services and shall supercede all prior agreements and understandings between them with reference to the subject matter of this agreement.

Amendment

No amendment of any provision of these Terms & Conditions of Business, nor any extension hereof, shall be valid or binding on a party unless made in writing duly executed by the parties hereto.

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No-waiver

Except as otherwise expressly provided in these Terms & Conditions of Business, no waiver in whole or in part of any of the provisions of this Agreement shall be valid or binding on a party unless in writing and duly executed by that party. Any waiver shall apply to the particular occasion in question and shall not be continuing and shall not constitute a waiver of any other provision.

Delay in Exercising Rights

Other than such failure or delay in respect of time limits specified in these Terms & Conditions of Business, no failure to exercise and no delay in exercising any right, power or remedy under these Terms & Conditions of Business shall operate as a waiver. No single or partial exercise of any right, power or remedy shall preclude any other or further exercise of that or any other right, power or remedy.

Governing Law

This agreement, its interpretation, breach and enforcement shall be governed and construed in accordance with the laws of England.

Accepted for and on behalf of the client
Signed: _____
Name: _____
Position: _____
Company: _____
Date: _____

Accepted for and on behalf of the ChilliApple Ltd
Signed: _____
Name: _____
Position: _____
Date: _____