

## TERMS AND CONDITIONS

### 1. Definitions and Interpretation

1.1 In these Conditions:

AGREEMENT means the Agreement for the provisions of the Services by the Company to the Client as contained in the Work Authorisation Sheet and these Conditions

CHARGES means the fees, charges and expenses for the Services as set out in the Work Authorisation Sheet

CLIENT means the person and/or business named on the Work Authorisation Sheet for whom the Company has agreed to provide the Services in accordance with these Conditions

PAGE refers to a single web page displayed on the Client's Website containing text, images, graphics, photographs, dynamic content or any other content. PAGES shall mean more than one Page

SEARCH ENGINE means a third party Website which allows users to search the World Wide Web for Websites containing information on topics specified by the user

SERVICE PROVIDER means a company contracted by the Client or by The Company on the client's behalf to host the Client's Website on its servers in order to allow the use of the Website by Internet users

SERVICES means the designing and/or programming of a Website suitable for display on the Internet, any Website related Service, any Internet related Service and the maintenance and updating of the same

SUPPLIED MATERIAL means any materials, elements of text, images, graphics, photographs, designs, trademarks, copyright, intellectual property, data, terms and conditions or other information provided by the Client to the Company relating to the Services

THE COMPANY means Ouse Creative Limited (formerly named 'GMP Group Limited') which carries on business at Milkmaid House, Rampton End, Willingham, Cambridgeshire CB24 5JB. Registered company no 04156124.

WEBSITE means an area of the World Wide Web of the Internet containing text, images, graphics, photographs, databases, code or any other content

WORK AUTHORISATION SHEET means the order sheet to which these Terms and Conditions are linked, appended or referred to

1.2 Words denoting the masculine gender shall include the feminine and neuter genders and vice versa and words denoting the singular shall include the plural and vice versa

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

### 2. Supply of the Services

2.1 The Company shall provide the Services to the Client subject to these conditions. The Client shall sign, date and return the Work Authorisation Sheet to the Company to acknowledge the Client's acceptance of the details of the Services and Charges outlined in the Work Authorisation Sheet before the Company shall commence work

2.2 If appropriate the Client at its own expense shall supply the Company with any Supplied Material within the time limit specified in the Work Authorisation Sheet.

2.3 The Client shall ensure that any Supplied Material is of a quality, type and nature suitable for use by the Company and shall ensure the accuracy of all Supplied Material

2.4 The Client shall at its own expense retain duplicate copies of all Supplied Material and shall insure against its accidental loss or damage. The Company will endeavour to return Supplied Material supplied by the Client wherever possible but gives no warranty so to do and shall have no liability for any loss or damage however caused to the Supplied Material

2.5 The Company may at any time without notifying the Client make any changes to the Services which are necessary to comply with any safety or other statutory requirements or which do not materially affect the nature or quality of the Services

### **3. Services not covered by the Agreement**

The following Services are specifically not covered by the Agreement:-

3.1 Where the Company will not be arranging act as a Service Provider in accordance with clause 9 hereof it is the Client's responsibility to arrange and pay for a suitable Service Provider

3.2 The Company will register any Website with a range of Search Engines only where the Work Authorisation Sheet provides that the Company shall do this but in any event the Company does not guarantee how or where any Search Engines will rank the Client's Website, if at all.

### **4. Payment**

The Client agrees to pay the charges on the following terms:-

4.1 All Charges shall become due and payable to the Company at the times and the stages specified in the Work Authorisation Sheet and the final payment shall become due and payable to the Company 15 days after completion of the Services

4.2 The Client shall pay any additional charges which are agreed between the Company and the Client for the provision of the Services 15 days after completion of the Services and the Client shall also pay such additional charges which are in the Company's sole discretion required as a result of the Client's instructions or lack of instructions, delay in providing or the inaccuracy of any Supplied Material or any other cause attributable to the Client

4.3 In the event of late payment the Client shall pay interest on the amount of the Charges outstanding at the rate of 7% above the base lending rate from time to time of The Cooperative Bank.

4.4 If payment remains overdue for more than 15 days the Company reserves the right to withhold further supply of goods or in the case of Websites to remove the Client's Website from viewing on the Internet and to withhold further Page designs until payment of all outstanding Charges and interest is made. Such withholding or removal does not relieve the Client of his or her obligation to pay any outstanding Charges and interest

4.5 The Client shall be liable for and shall indemnify the Company against all costs and expenses incurred by the Company in respect of any steps, actions or proceedings made or brought against the Client by the Company to obtain payment of outstanding Charges and interest

4.6 All payments must be in UK Pounds Sterling unless otherwise agreed in writing. If any payment from the Client is returned by the bank as unpaid for any reason the Client will be liable for an administration fee of £35.00.

### **5. Additional Services**

5.1 The Agreement constitutes the sole Agreement between the Company and the Client regarding the Services. Any additional work requested by the Client must be the subject of a new Agreement

5.2 Certain Website features may require the use of free, third party scripts, software, services or technology to implement. The Client agrees that use of such free scripts, software, services or technology may be conditional upon accepting a third party agreement, contract or terms and conditions and where this is the case the Company agrees to provide the Client with a copy, or access to a Website copy, of the said agreement, contract or terms and conditions before implementing any such script, software, services or technology

### **6. Performance**

6.1 The Company warrants with the Client that the Services will be provided using reasonable care and skill and so far as reasonably possible in accordance with the Work Authorisation Sheet and at the intervals and within the times referred to in the Work Authorisation Sheet. Where the Company supplies in connection with the provision of the Services any products supplied by a third party the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise but shall where possible assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the products to the Company

### **7. Website Design, Website Related Services or Internet Related Services**

7.1 The Company will provide the Client with ongoing opportunities to view the appearance and content of the Website through its development stage. During the Website's development the Company is entitled to ask the Client to sign off any work which he or she finds satisfactory. Such signed off work will be deemed to be accepted and approved by the Client and to meet the obligations of the Company to the Client with regard thereto

7.2 The Company will use its best endeavours to preview the Client's Website with a variety of Web browser software. The Client acknowledges that Web browser software, different versions of the same Web browser software, the same brand of Web browser software on different hardware or software platforms or individual Web browser software settings

may affect the appearance or operation of the Client's Website. The Client agrees that the Company cannot be held responsible for the appearance and operation of the Client's Website with Web browser software

7.3 It shall be the responsibility of the Client, if appropriate, to:-

7.3.1 (where the Company is not to arrange for a third party Service Provider to act as Service Provider) arrange hosting services with a third party Service Provider

7.3.2 provide to the Company legal terms and conditions for its Website

7.3.3 register with the Data Protection Registrar under the provisions of the Data Protection Act 1984

7.3.4 make arrangements for secure and encrypted data handling with regard to credit card transactions and other personal information with an appropriate secure server, except where the Work Authorisation Sheet provides that the Company shall do this

7.3.5 register the Website with Search Engines, except where the Work Authorisation Sheet provides that the Company shall do this

7.4 The Client accepts that a third party Service Provider may choose to restrict or deny the Company certain Web technologies, facilities, programs, scripts, permissions or solutions necessary to implement certain Website features. The Client shall indemnify the Company against any such restriction or denial implemented by a third party Service Provider

7.5 For the avoidance of doubt, it is hereby declared that where the Company is to be responsible for registering the Client's Website with Search Engines, this will be done only after all Charges and interest have been fully paid in accordance with clause 4

7.6 The Company may at its own discretion assist the Client in dealing with a third party Service Provider if requested by the Client to do so. The Client agrees that the Company may charge for this service and that the Company is under no obligation to provide such assistance

7.7 A discreet link to the Company's Website will appear at the bottom of each Page on the Client's Website. The Company reserves the right to remove the link if it so wishes. The Company will remove the link if requested to do so by the Client

## **8. Website Maintenance**

8.1 The Company will provide the Client with ongoing opportunities to view the appearance and content of the Web Site throughout the term of this Agreement. The Client agrees to sign off any amendments or updates to the Web Site, whether specifically requested by the Client or carried out at the Company's discretion, which he or she finds satisfactory. Such signed off work will be deemed to be accepted and approved by the Client and to meet the obligations of the Company to the Client with regard thereto

8.2 The Company will use its best endeavours to preview any amendments or updates to the Client's Web Site with a variety of Web browser software. The Client acknowledges that Web browser software, different versions of the same Web browser software, the same brand of Web browser software on different hardware or software platforms or individual Web browser software settings may affect the appearance or operation of the Client's Web Site. The Client agrees that the Company cannot be held responsible for the appearance and operation of the Client's Web Site with Web browser software

8.3 It shall be the responsibility of the Client, if appropriate, or where the Company is not required to do so under an Agreement, to:-

8.3.1 arrange hosting services with a Service Provider and to have the Web Site registered with Search Engines

8.3.2 provide to the Company legal terms and conditions for its Web Site

8.3.3 register with the Data Protection Registrar under the provisions of the Data Protection Act 1984

8.3.4 make arrangements for secure and encrypted data handling with regard to credit card transactions and other personal information with an appropriate security

8.4 The Client accepts that a Service Provider may choose to restrict or deny the Company certain Web technologies, facilities, programs, scripts, permissions or solutions necessary to implement certain Web Site features. The Client shall indemnify the Company against any such restriction or denial implemented by a Service Provider

## **9. Service Provider terms**

Where the Company arranges for a Service Provider to provide services to the Client and the Client is required to be bound by the terms and conditions of the Service Provider:-

9.1 The Company shall supply the Client with either a paper copy or an appropriate link to a Website copy of the up-to-date version of the Service Provider's terms and conditions at the commencement of the Agreement or as soon as reasonably practicable thereafter

9.2 The Client shall be bound by the obligations contained in Service Provider's terms and conditions as if he were a customer of Service Provider direct and as if those Terms and Conditions were incorporated herein and such obligations shall be enforceable by the Company against the Client

9.3 In addition to the rights contained in these Terms and Conditions the Company shall have the same suspension, termination and other rights against the Client as those under the Service Provider's terms and conditions as if those terms and conditions were incorporated herein

9.4 Where a provision of the Company's Terms and Conditions are in conflict or contradiction with the Service Provider's terms and conditions; the Company will determine the appropriate interpretation

9.5 The Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any breach of the Service Provider's terms and conditions as referred to above

## **10. Intellectual Property Rights**

10.1 The property and copyright or other Intellectual Property Rights in any Supplied Material shall (subject to any such rights of any third party) belong to or continue to belong to the Client

10.2 The Client warrants that any Supplied Material and its use by the Company for the purpose of providing the Services will not infringe the copyright or other rights of any third party and the Client shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement

10.3 The property and copyright or other Intellectual Property Rights in the design, layout and where applicable the content of any Web Pages shall belong to the Company but the Company shall assign to the Client any such property or other rights which it may have for no further consideration upon completion of the Agreement (unless terminated by the Company pursuant to clause 13) subject to and after payment in full of the Charges and interest referred to in clause 4 hereof

10.4 Copyright in the HTML, JavaScript and any other computer language or code which creates and enables the Website shall remain the property of the Company but the Company shall grant to the Client an irrevocable non-exclusive non-assignable licence to use the HTML, JavaScript and any other computer language or code for the purpose of creating and enabling the Website, but for no other purpose, for no further consideration upon the completion of the Agreement (unless terminated by the Company pursuant to clause 13) subject to and after payment in full of the Charges and interest referred to in clause 4 hereof

## **11. Confidentiality**

Any Supplied Material or other information provided by the Client which is so designated by the Client shall be kept confidential by the Company but the foregoing shall not apply to any Supplied Material or other information which are public knowledge at the time when they are so provided and shall cease to apply if at any future time they become public knowledge through no default of the Company

## **12. Warranties and Liability**

12.1 The Company does not warrant that the functions of any Website will meet the Client's expectations of the number of visitors to the Website or resulting business

12.2 Except in respect of death or personal injury caused by the Company's negligence or as expressly provided in these conditions the Company shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under the express terms of the Agreement for any loss of profit loss of business or any indirect special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of the Company or its servants or agents or otherwise) which arise out of or in connection with the provision of the Services or their use by the Client or out of the operation of or inability to operate the Pages or Website and the entire liability of the Company under or in connection with the Agreement shall not exceed the amount of the Charges for the provision of the Services except as expressly provided in these Conditions

12.3 The Company gives no warranty for the quality, reliability or service of any Service Provider and does not warrant that the operation of the Website will be uninterrupted or without error in any event

12.4 If the Client shall not supply the Company with the Supplied Material within the time limit specified in the Work Authorisation Sheet in accordance with Clause 2 hereof the Company may at its sole discretion vary or extend all the time limits for the provision of the Services as specified in the Work Authorisation Sheet.

12.5 The Company shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing or failure to perform any of the Company's obligations in relation to the Services if the delay or failure was due to any cause beyond the Company's reasonable control

## **13. Duration and Termination**

13.1 Either party may (without limiting any other remedy) at any time terminate the Agreement by giving written notice to the other if the other commits any breach of these conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so or if the other goes into liquidation or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed

13.2 In the event that the Agreement is terminated, the Client shall pay to the Company a proportionate sum for Services as carried out up to the date of termination on the basis of time incurred and materials used

13.3 If the Agreement relates to the ongoing provision of services through a Service Provider or ongoing maintenance of Websites then subject to the provisions of clause 13.1 the term of the Agreement shall be for one year from the date of the Agreement and shall thereafter continue until terminated by either party giving three months written notice to the other

#### **14. General**

14.1 The Client acknowledges that he or she is generally familiar with the nature and definitions of the Internet and World Wide Web and proposed uses thereof

14.2 In providing the Services the Company is acting as an independent contractor and is not acting as an employee of the Client

14.3 These Conditions together with the terms set out in the Work Authorisation Sheet constitute the entire agreement between the parties and supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions expressed or implied by statute or otherwise are excluded to the fullest extent permitted by law

14.4 Neither party may assign, transfer or in any way make over any of its rights or obligations to any third party without the written consent of the other party

14.5 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as any at the relevant time has been notified pursuant to this provision to the party giving the notice

14.6 No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right and no waiver by either party of any breach of the Agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision

14.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be effected

14.8 Any dispute arising under or in connection with these conditions or the provision of the Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application by either party to the President for the time being of the Law Society of England and Wales having due regard to any representations made to him as to the appropriate qualifications of such arbitrator. The arbitration shall be in accordance with the Arbitration Acts 1950 to 1979 or any re-enactment or modification of such acts for the time being in force

14.9 English Law shall apply to the Agreement and the parties agree to submit to the jurisdiction of the English

Ouse Creative Limited terms and conditions: V6.0-Published and valid from 10/02/2012.