

Our terms of supply



1. Interpretation.

1.1 In these Conditions 'CHARGES' means the charges shown in the Estimate as amended from time to time in accordance with paragraph 2.1 of these Conditions. 'CLIENT' means the person named on the Estimate for whom WOW Creative Services has agreed to provide Finished Work in accordance with these Conditions.

'CLIENT MATERIAL' means any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service.

'CONTRACT' means the contract for the provision of the Finished Work comprising these Conditions and the Estimate.

'WOW CREATIVE SERVICES' refers to WOW! CREATIVE SERVICES LIMITED.

'WOW CREATIVE SERVICES MATERIAL' means the Estimate together with any Documents or other materials and any data or other information provided by WOW Creative Services relating to the Finished Work, the Specified Service or the Products.

'DELIVERY DATE(S)' means the delivery date(s) referred to in the Estimate.

'DOCUMENT(S)' includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data.

'ENGAGEMENT' means the written acceptance of the Estimate by the Client.

'FINISHED WORK' means the finished item(s) as specified in the Estimate.

'FORCE MAJEURE' means any of the following: (i) Acts of God, (ii) Outbreak of hostilities, riot, civil disturbance, acts of terrorism, (iii) The act of any government or authority (including refusal or revocation of any licence or consent), (iv) Fire, explosion, flood fog or bad weather, (v) Power failure, failure of telecommunication lines, failure breakdown of plant, machinery or vehicles, (vi) Default of suppliers or sub-contractors, (vii) Theft, malicious damage, strike, lockout, or industrial action of any kind, and (viii) Any cause or circumstance whatsoever beyond WOW Creative Services' reasonable control. '

'PRODUCT(S)' means the goods as specified in the Estimate.

'ESTIMATE' means the Estimate to which these Conditions are appended together with any supporting Documents delivered to the client prior to Engagement.

'RETURNED PROOFS' means any proofs of Finished Work supplied to the Client by WOW Creative Services and returned to WOW Creative Services by the Client approved as drawn or subject to specified amendments or corrections. 'SPECIFIED SERVICE(S)' Means the design print finishing creation and maintenance of a web site and any other services to be provided by WOW Creative Services to the client and referred to in the schedule estimate.

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

2. Supply of the Specified Service, Finished Work and Products.

2.1 On Engagement WOW Creative Services will supply and the Client will purchase the Specified Services, the Finished Work or the Products in accordance with the Estimate and subject to these conditions. Any post Engagement changes or additions to the Estimate or these Conditions must be agreed in writing by WOW Creative Services and the Client.

2.2 The Client shall at its own expense supply WOW Creative Services with all necessary Documents or other materials, instructions and all necessary data or other information relating to the Specified Service, the Finished Work, or the Products within sufficient time to enable WOW Creative Services to meet its obligations under the Contract.

2.3 The Client shall ensure the accuracy and completeness of all Client Material and the Client shall indemnify WOW Creative Services against loss, damage, costs or expenses incurred as a direct or indirect result of any inaccurate or incomplete Client Material.

2.4 The Client shall at its own expense retain duplicate copies of all Client Material and insure against its accidental loss or damage. WOW Creative Services shall have no liability for any such loss or damage, however caused. All Client Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.

2.5 Further details about the Specified Services, the Finished Work, or the Products and advice or recommendations about their provision or utilisation that are not included in the Estimate may be made available by WOW Creative Services on written request.

2.6 WOW Creative Services may correct any typographical or other errors or omissions in any brochure, promotional literature, Estimate or other Document relating to the provision of the Specified Services, the Finished Work, or Products without any liability to the Client.

2.7 WOW Creative Services may at any time without notifying the Client make any changes to the Specified Services,

Finished Work or Products which are necessary to comply with any applicable statutory requirements, or which do not materially affect the nature or quality of the Specified Services, Finished Work or Products.

2.8 WOW Creative Services shall not be liable to the Client in respect of any variation in the number of printed items delivered to the Client. Quantities referred to in the Estimate are subject to overs and shortage of 5% for work in one colour only and 10% for other work (4% and 8% respectively for quantities of 50,000 and over).

2.9 The Delivery Date is for the guidance of the Client only and represents WOW Creative Services' best estimate of the date upon which WOW Creative Services can deliver the Specified Service, Finished Work or Products to the Client.

Notwithstanding that WOW Creative Services may have delayed or failed to deliver the Finished Work or Products or completed the Specified Service on or before the Delivery Date the Client shall be bound to accept delivery and pay for the Specified Service or Finished Work or the Products in full provided that the provision or delivery of the same shall be tendered within one month of the Delivery Date. WOW Creative Services shall not be liable for any loss or damage whatever due to failure by WOW Creative Services to deliver the Finished Work or Products or complete the Specified Service (or any part of them) on or before the Delivery Date.

2.10 WOW Creative Services shall be entitled to deliver the Finished Work or Products to the Client or complete the Specified Service before the Delivery Date and the Client shall except the tendering thereof on the date tendered or completed.

2.11 If performance of WOW Creative Services' obligations under the Contract is delayed or hindered by circumstances outside its control amounting to force majeure as defined in these Conditions, the following shall apply:

2.11.1 WOW Creative Services will as soon as reasonably practicable give the Client notice of the reasons for the delay or hindrance. However, failure to give such notice will not prevent WOW Creative Services relying on the remaining provisions of this clause, and WOW Creative Services will incur no liability for failure to give such notice.

2.11.2 WOW Creative Services' duty to perform shall be suspended for as long as the circumstances amounting to force majeure continue, and at the same time the performance of WOW Creative Services' obligations shall be extended by a period equal to the duration of those circumstances.

2.12 Where WOW Creative Services are asked to defer the provision of Specified Services or the Delivery of Finished Work or Products, WOW Creative Services shall be entitled:

2.12.1 To deliver an invoice to the Client and to receive payment of such account in respect of all specified Services, Finished Products or Products completed or supplied under the Contract to the date of deferment and/or payment for any materials or services purchased by WOW Creative Services in connection with the Contract.

2.12.2 In respect of deferrals in excess of 7 days after the Delivery Date to make an additional charge for the storage of any Finished Work or Products remaining on their premises whether or not the same has been paid for by the Client.

3. Charges.

3.1 Subject to any special terms agreed, the Client shall pay any additional sums that are agreed between WOW Creative Services and the Client for the provision of the Specified Services, Finished Work or Products or other items which, in WOW Creative Services' sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any client material or any other cause attributable to the Client.

3.2 Where WOW Creative Services incurs additional costs arising from changes in the prices charged by its suppliers and which are brought into effect after the date of the Estimate WOW Creative Services shall be entitled to vary its Charges accordingly by written notice to the Client.

3.3 All Charges are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time.

3.4 WOW Creative Services shall be entitled to deliver interim invoices to the Client following the end of each month in which the Specified Services, Finished work or Products are provided or supplied, or at other times agreed with the Client.

3.5 The Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of WOW Creative Services' invoice.

3.6 If payment is not made within the due date, WOW Creative Services shall be entitled, without limiting any other rights it

may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 3% above the base rate from time to time of Lloyds Bank plc from the due date until the outstanding amount is paid in full.

4. Rights in WOW Creative Services Material and Client Material

4.1 The property and any copyright or other intellectual

property rights in:

4.1.1 Any Client Material shall belong to the Client.

4.1.2 Any WOW Creative Services Material shall, unless agreed in

writing between the client and WOW Creative Service, belong to WOW Creative Services PROVIDED THAT the Client shall upon payment of all monies due to WOW Creative Services be licensed to use the WOW Creative Services Material for the purposes set out in the Estimate. 4.1.3 The Estimate together with any Documents shown or handed to the Client at the time that WOW Creative Services present the Estimate to the client shall belong to WOW Creative Services and shall not be used, copied or disclosed to a third party or otherwise dealt with without the written consent of WOW Creative Services.

4.2 Any Client Material or other information provided by the Client which is so designated by the client and any WOW Creative Services Material shall be kept confidential by WOW Creative Services, and all WOW Creative Services Material or other information provided by WOW Creative Services which is so designated by WOW Creative Services shall be kept confidential by the Client; but the foregoing shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

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

4.4 Subject to paragraph 4.3, WOW Creative Services warrants

that any Client Material and its use by Client in accordance with Paragraph 4.1.2 will not infringe the copyright or other rights of any third party, and WOW Creative Services shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.

4.5 All information, drawings, specifications, documentation, source or object code not in the public domain which WOW Creative Services or the client may impart to each other is proprietary and confidential. The client and WOW Creative Services hereby agree that they shall use the same solely in accordance with the provisions of this Agreement and that they shall not at any time during or after expiry of termination of this Agreement disclose the same, whether directly or indirectly, to any third party without prior written consent from each other or except as required by Law.

4.6 In the event that new copyrights, inventions, designs or processes evolve in performance of or as a result of the specified services in this Agreement, the client acknowledges the same shall be the property of WOW Creative Services.

4.7 The client indemnifies WOW Creative Services fully against all liabilities, costs and expenses which WOW Creative Services may incur as a result of any work carried out in accordance with the client's specifications involving infringement of any trade marks, trade names, copyrights, patterns and other intellectual property rights.

5. Warranties and Liability.

5.1 WOW Creative Services warrants to the Client that the Specified Services and Finished Work will be provided using reasonable care and skill, and as far as reasonably possible, in accordance with the Estimate provides and at the intervals and within the times specified therein. Where the Estimate provides the supply of any goods or services by a third party, WOW Creative Services does not give a 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 goods to WOW Creative Services.

5.2 WOW Creative Services shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Client Material or Returned Proofs or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from there late arrival or nonarrival, or any other fault of the Client.

5.3 Except in respect of death or personal injury caused by WOW Creative Services' negligence, or as expressly provided in these conditions, WOW Creative Services 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 Contract, for any loss of profit or any indirect special or consequential loss, damage, costs, expenses or other claims (whether caused by the negligence of WOW Creative Services, its servants or agents or otherwise) which arise out of or in connection with the provision of the Specified Services, Finished work or the Products or their use by the Client, and the entire liability of WOW Creative

Terms of supply continued



Services under or in connection with the contract shall not exceed the amount of the Charges, except as expressly provided in these conditions.

5.4. WOW Creative Services and its suppliers make reasonable endeavours to ensure the accuracy of the specified services but make no guarantee as to their validity. Upon notification by the client or any third party with regard to any suggested update or correction to the specified services, WOW Creative Services shall work with the client and its suppliers to seek clarification regarding the accuracy thereof and make any required changes to the specified services as soon as practicable and in any event no later than within two working days of notification.

5.5. The liability of WOW Creative Services in respect of the specified services shall be limited to the provisions of Clause 5.4. above and in all other respects the shared content is given without liability or responsibility, however arising, on the part of WOW Creative Services or anyone also involved in the creation production and/or delivery of the specified services and the client is advised to seek independent advice as to its validity. It is available for the sole use of the client and no responsibility is accepted to any third party for the whole or any part of its contents.

5.6. WOW Creative Services shall not be liable to the client for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with this Agreement the specified services or its use other than death or personal injury to the extent only that the same arises as a result of the negligence of WOW Creative Services, its employees, agents or authorised representatives.

5.7. Notwithstanding the generality of sub clause

5.6. WOW Creative Services expressly exclude liability for consequential loss or damage which may arise in respect of the specified services, their use of or in respect of other equipment or property, or for loss of profit, business, revenue, goodwill or anticipated savings.

5.8. In the event that any limitation or provision contained in this Agreement shall be held to be invalid for any reason and WOW Creative Services become liable for any loss or damage that it purports to exclude, such liability shall be limited to the amount paid by the client for the specified services.

5.9. WOW Creative Services disclaim any and all loss or liability resulting from, but not limited to:

(i) Loss or liability resulting from access delays or access interruptions

(ii) Loss or liability resulting from data non delivery or data missed delivery.

(iii) Loss or liability resulting from acts of God.

(iv) Loss or liability resulting from unauthorised use or misuse of your account identifier or password.

(v) Loss or Liability resulting from errors omissions or misstatements in any and all informational services provided under this Agreement.

(vi) Loss or liability resulting from the interruption of the specified services. The client agrees that WOW Creative Services will not be liable for any loss of registration and use of the client's domain names or for interruption of business or any indirect, special, incidental or consequential damages of any kind (including lost profits) regardless of the form of action whether in contract tort (including negligence) or otherwise.

5.9 (vii) Loss or liability arising after the approval of services has been given by the client, where no ongoing maintenance contract exists. The client agrees that, upon materials entering the public domain, all maintenance issues are the responsibility of the client. WOW agrees to adhere to current website security standards when delivering services in this area; however, security is an ongoing issue and one that should be considered by the client.

6. Termination.

6.1 The Client shall be entitled to terminate the Contract at any time by giving not less than three months' written notice to WOW Creative Services.

6.2 Either party may (without limiting any other remedy) at any time terminate the Contract 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 his or its creditors or has a receiver or administrator appointed.

6.3 In the event that WOW Creative Services terminates the

Contract under paragraph 6.2 above it shall have in respect of all monies due to it from the Client a general lien over all Client Material and other property in its possession belonging to the Client and shall be entitled on the expiration of 14 days written notice to the client or its successors in title to dispose of the said property in such a manner as it thinks fit and apply all the proceeds of sale to discharge such debts.

7. General.

7.1 The Contract constitutes the entire agreement between the parties, supersedes 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.

7.2 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 may be relevant at the time have been notified pursuant to this provision to the party giving notice.

7.3 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 any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

7.4 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 affected.

7.5 Any dispute arising under or in connection with these Conditions or the provision of the Specified Services, Finished Work or Products shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the London Chamber of Commerce in accordance with the Arbitration Act 1996.

7.6 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.