

# Terms and Conditions of Supply of Services

Version 1.6, 29<sup>th</sup> June 2020

The Customer's attention is particularly drawn to the provisions of clause 7.

## 1. Interpretation

### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Price or Pricing:** the charges payable by the Customer for the supply of the Services in accordance with clause 5 and which are set out in the section headed Pricing in the proposal;

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 10.5;

**Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these conditions;

**Customer:** the person company or firm who purchases Services from the Supplier;

**Deliverables:** the deliverables set out in the Proposal and to be delivered by the Supplier for the Customer on completion of the Services;

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Services:** the services, including the deliverables, supplied by the Supplier to the Customer as set out in the section headed Scope in the proposal;

**Specification:** the process for the provision of and/or specification of the Services as set out in the section headed Process in the Proposal;

**Supplier:** 25-28 Limited, trading as "Cast From Clay", a company registered under number 10385315 in England with its registered office at Raedan, 7 Henrietta Street, London WC2E 8PS, United Kingdom.

**Proposal:** is the document issued by the Supplier to the Customer which sets out the scope of the Services to be provided by the Supplier, the process by which those Services will be made available and the Deliverables which will be delivered to the Customer on completion of the Services.

## 1.2 Interpretation:

- a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- b) Any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- c) A reference to writing or written includes email.

1.3 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

1.4 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## 2. Basis of contract

2.1 These Conditions together with the sections headed Scope, Process and Pricing in the Proposal constitute the contract between the Customer and the Supplier for the provision of the Services.

2.2 The Proposal and these Conditions shall be deemed to be accepted when the Customer either confirms its acceptance of the Proposal in writing (including by way of email) or pays the advance payment required under the Proposal at which point and on which date the Contract shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Proposal (including all sections in the Proposal other than those expressly referred to in clause 2.1 above) or in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 Any quotation given by the Supplier or the Proposal shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

## 3. Supply of services

3.1 The Supplier shall supply the Services to the Customer in accordance with these Conditions and the Specification in all material respects.

3.2 Subject to the Customer's compliance with its obligations under clause 4, the Supplier shall use reasonable endeavours to complete the provision of the Services by the target completion date specified in the Proposal but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 The Supplier shall have the right to make any changes to the Services and the Processes which are necessary to comply with any applicable law or which do not materially affect the nature or quality of the Services.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 All websites are developed to work primarily across all major browsers and platforms including devices such as mobile phones and tablets. However, the Supplier cannot guarantee complete and/or long term compatibility across every major browser, platform or device due to updates and upgrades by their respective vendors. The Supplier cannot guarantee compatibility in old or redundant browser software.

3.6 The Customer acknowledges and agrees that the Price has been calculated on the basis that during the design phase there are no more than three revisions and if the Supplier is asked to prepare more revisions to any of the designs then additional fees will be payable for such revisions in accordance with clause 5.2.

3.7 The Customer agrees that the Supplier is not liable for any bugs, performance issues or failure of the WordPress content management system (or any other open-source content management system which in this clause is referred to as "Third Party Software"). The Third Party Software is open-source software distributed under the General Public Licence and is maintained and developed by a community of users and developers. If there are any such bugs or performance issues or failures in any Third Party Software then the supplier's total liability shall be to refer such matter to the relevant development community for such Third Party Software.

3.8 The Customer shall be fully responsible for any issues that may arise as a result of any changes that the Customer (on any third party on behalf of the Customer) makes to any of the Deliverables. If such changes result in any functionality errors and the Supplier is asked to rectify such errors then additional fees shall be payable for such work in accordance with clause 5.2.

3.9 The Customer is responsible for ensuring that regular back-up copies are made either by the Customer or by an appropriate third party on behalf of the Customer in case of any failure at the third party hosting servers.

#### 4. Customer's obligations

4.1 The Customer shall:

- a) co-operate with the Supplier in all matters relating to the Services;

- b) provide the Supplier with such information and materials including texts and images in such format as the Supplier may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- c) obtain and maintain all necessary licences, permissions and consents which may be required for the operation of its website and ensure that its website at all times complies with all relevant legislation;
- d) review the Supplier's work and provide feed-back and sign-off in a timely manner;
- e) comply with the payment schedule and any additional obligations as set out in the Proposal;
- f) provide images or photographs in a digital format and with such resolution that will allow them to be re-sized;
- g) provide all of the documentation, information and sign-offs referred to above as soon as reasonably required by the Supplier and the Customer acknowledges and agrees that any delay on its part will cause a delay on the Supplier's part to provide the Services;
- h) advise in advance and in writing of any confidential information to be presented to the Supplier (whether by email or otherwise) and ensure that all such information is clearly marked as "confidential".

4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation:

- a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies such default or carries out the relevant act or omission, and to rely on the same to relieve it from the performance of any of its obligations; and
- b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2.

4.3 The Customer hereby warrants that it owns all of the Intellectual Property Rights in all texts images photographs designs artworks trade names and other material provided by the Customer for inclusion in the website or has all appropriate licences to use such material in the way that the Customer intends to use them. The Customer shall indemnify and keep indemnified the Supplier from and against all costs expenses losses and liabilities which the Supplier may in anyway suffer or incur as a result of or in connection with any such material infringing or alleging to infringe the Intellectual Property Rights of any third party.

## 5. Price

5.1 The Price for the Services is set out in the Proposal and shall be paid in accordance with the provisions set out in the Proposal. Subject to those provisions, a sum equal to

50% of the Price shall be paid immediately upon the Customer's acceptance of the Proposal, a sum equal to 30% of the Price shall be paid on the Business Day prior to the delivery of the Deliverables and the remaining 20% shall be paid within 30 days after delivery of the Deliverables.

5.2 If the Supplier provides any services other than the Services or if the parties agree any variation to the Services or the Process then additional fees shall be payable by the Customer either in accordance with such rates as the parties have agreed or, in the absence of such agreement, on the basis of the Supplier's standard daily fee rates.

5.3 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials provided that no such fees shall be payable by the Customer unless they have been approved in advance by the Customer.

5.4 The Supplier shall invoice the Customer in accordance with the agreed payment schedule and the Customer shall pay each invoice submitted by the Supplier:

- a) within 7 days of the date of the invoice; and
- b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

5.5 Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

5.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per cent per annum above the base rate from time to time of NatWest Bank. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

5.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## 6. Intellectual property rights

6.1 If and to the extent that (a) the Supplier creates any Intellectual Property Rights as a result of the Deliverables completed by the Supplier as part of the Services, and (b) any such Rights have been created solely and exclusively for the Customer and do not incorporate the Intellectual Property Rights of the Supplier or any third party, and (c) the

Customer has paid the full Price due to the Supplier under the Contract then the Supplier shall assign such Rights to the Customer.

6.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

7. Limitation of liability: The Customer's attention is particularly drawn to this clause.

7.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- b) fraud or fraudulent misrepresentation; or
- c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

7.2 Subject to clause 7.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- a) loss of profits;
- b) loss of sales or business;
- c) loss of agreements or contracts;
- d) loss of anticipated savings;
- e) loss of use or corruption of software, data or information;
- f) loss of damage to goodwill; and
- g) in each of the above cases, whether such losses arise directly or indirectly or for any other indirect or consequential loss.

7.3 Subject to clause 7.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 50% of the total Price paid under the Contract.

7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

7.5 This clause 7 shall survive termination of the Contract.

8. Termination

8.1 Either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors, being wound up, having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if (a) the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 10 Business Days after being notified to make such payment, or (b) the Customer fails to approve the final design concepts by no later than 10 Business Days after being requested to do so by the Supplier.

8.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract if the Customer becomes subject to any of the events listed in clause 8.1(b) to clause 8.1(d) or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

## 9. Consequences of termination

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 Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- c) clauses which expressly or by implication survive termination shall continue in full force and effect.

## 10. General

10.1 Force majeure. The Supplier shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including without limitation any telecommunication problems, software failures, hardware failures, third party interference, any act or omission of a third party, any industrial strike, riot, terrorism or any act of God.

## 10.2 Assignment and other dealings.

- a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

## 10.3 Confidentiality.

- a) Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination of the Contract, disclose to any person any Confidential Information, except as permitted by clause 10.3(b). In this clause Confidential Information means any information supplied by one party to the other during the performance of this Contract and which has been expressly marked as "Confidential".
- b) Each party may disclose the other party's Confidential Information:
  - a. to its employees, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
  - b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 10.4 Entire agreement.

- a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

10.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- a) waive that or any other right or remedy; or
- b) prevent or restrict the further exercise of that or any other right or remedy.

10.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### 10.8.1 Notices.

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at such address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post and also by email. All notices to the Supplier must be sent to Tom Hashemi at tom@weareflint.co.uk. A notice or other communication shall be deemed to have been received one Business Day after transmission.
- b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.9 Third parties. No one other than a party to the Contract shall have any right to enforce any of its terms.