



# Terms & Conditions of Business

**We/Us** Zing Digital Services LLP whose registered office is at 42 Lytton Road, Barnet, Hertfordshire. EN5 5BY

Zing Digital Services LLP company No. OC353599

**You** The Client contracting with us identified in the Proposal and or Quote

## 1. Definitions

- 1.1 'Proposal' means all Work You assign Us to carry out by way of a Contract, Brief, Schedule, Written/ Verbal Communication, Job, etc.
- 1.2 'Proposal' can be supplied either as an Estimate, Project Change Notification or Statement of Work
- 1.3 'Confidential Information' means all business, technical, financial or other information created or exchanged between You and Us in the course of or in preparation or negotiations for the Work.
- 1.4 'You' means the individual entity whose details are set out in the Proposal but in the case of a Limited Company/LLP/PLC will include any subsidiary or holding company or subsidiary of any holding company, as defined by Companies Act 2006.
- 1.5 'Your Materials' means the materials, specifications or information provided by You to Us, whether physical or digital.
- 1.6 'Delivery Date' means the date for completion set out in the Proposal.
- 1.7 'Intellectual Property Rights' means any and all patents, trade marks, rights in domain names, rights in designs, copyrights and database rights (whether registered or not) rights in confidential information and all other intellectual property rights of a similar or corresponding character which may subsist now or in the future in any part of the world.
- 1.8 'Specification' means any technical specification set out in the Proposal.
- 1.9 'Work' means the goods and services to be provided by Us for You set out in the Proposal.

## 2. Our Duties

- 2.1 We shall use reasonable endeavours to deliver the Work on or before the Delivery Date.
- 2.2 We shall use reasonable skill and care.
- 2.3 We will take reasonable care to safeguard Your Materials while in our care, but not in transit. We will not be responsible for any loss, damage, destruction or unauthorised use except as a direct result of Our negligence or wilful default. We shall have no obligation to keep Your Materials after the completion of the Work. If you do not collect Your Materials within 30 days of our final invoice ownership passes to Us and we may dispose of them.

### **3. Your Duties**

- 3.1 You warrant that to the best of Your knowledge and belief all information supplied to Us before and during this Agreement will be accurate and not contrary to any applicable law.
- 3.2 Where required You will deliver Your Materials to Us promptly in the agreed format. If delivery is delayed the Delivery Date for our Work may at our discretion be put back by a similar period.
- 3.3 Where Our Work requires Your approval or acceptance We shall tell You that. If you do not notify Us otherwise within 7 days You will be deemed to have approved the Work sent to you.
- 3.4 You have final responsibility for approving draft Work for accuracy and acceptability. We shall have no liability for any errors not corrected by You in drafts submitted. Typos or alterations that need amending after a project has been completed will be charged at our usual rates.

### **4. Payment**

- 4.1 Zing will commence work once an agreed advance payment has been made. If the advance payment or agreed payment instalments are late, then the delivery date will be delayed by the corresponding number of work days.
- 4.2 We reserve the right to cease work, revoke any licences and withhold materials until any overdue payments have been made.
- 4.3 If Zing needs to pay a third party in order to deliver your project, we may require an advance payment to mitigate our liability.
- 4.4 Payment in full (less any Advance Payment) is due 30 days from the date of our invoice.
- 4.5 For any payments made later than 30 days from the date of our invoice, Zing reserves the right to enforce statutory interest and charges in accordance with the Late Payment Interest Regulations.
- 4.6 Any queries relating to any invoice must be raised as soon as possible and no later than 7 days from the date of the invoice.
- 4.7 You may not withhold or offset payments for any reason.
- 4.8 If You terminate your instructions before any Works are completed, you are still obliged to pay for the work undertaken as well as for charges and expenses incurred while fulfilling our obligations under this Agreement, upto the date of termination, or as a direct or indirect result of your termination.
- 4.9 It is Your decision whether to use any Works We supply. If We have complied with our obligations under this Agreement We will still be entitled to be paid in full.

### **5. Intellectual Property Rights**

- 5.1 Upon receipt of full payment, we grant You an exclusive, royalty-free, world-wide, non-assignable licence to use the Work and all Intellectual Property Rights contributed by Us, where Zing are the originators of any designs, concepts, imagery, copy, etc. However, where we have used a 3rd party or library/stock material, the rights are as per the purchase agreement with that 3rd party supplier.
- 5.2 We retain all right, title and interest (including all Intellectual Property Rights) in the Work, and in any material contained in any presentation made to You prior to this Agreement. We also retain all right, title, interest and licence to original concept Work presented to You during project approval. Such work cannot be reproduced, modified, adapted or licensed for production without Our consent.
- 5.3 You shall not edit amend or alter the Work delivered by Us without Our prior written consent.

5.4 We retain the right to display or refer to the Work as an example of our work.

## **6. Warranties**

- 6.1 We warrant that the Work supplied by Us will not, to the best of Our knowledge, infringe any Intellectual Property Right of any third party or violate any applicable laws or regulations.
- 6.2 Unless specified in the Proposal We shall not be under any obligation to do searches or due diligence for Intellectual Property Right of any third party.
- 6.3 You warrant and represent to Us that, so far as You are aware, Our use of Your Materials in accordance with the terms of this Agreement will not infringe the Intellectual Property Rights of any third party.
- 6.4 If We perform the Works negligently or materially in breach of this Agreement We will re-perform the relevant part of the Works, if requested by You within 3 months of completion of the Works or the termination of this agreement.
- 6.5 This warranty shall not apply where the Works are modified or combined with other materials by someone other than Us, after We have provided updated or modified Work, or if the Work is used other than as specified by You to Us.

## **7. Confidentiality**

- 7.1 We will not at any time during or after the end of the Agreement disclose or make use of any confidential information concerning Your business, unless necessary for the performance of this Agreement, or we must disclose it by law, or the information at the time of disclosure is already in the public domain, other than through our default.

## **8. Limitation of Liability**

- 8.1 Notwithstanding any other provision in this agreement, Our liability to You for death or injury resulting from Our negligence or that of employees, agents or sub-contractors for whom we have vicarious liability shall be limited to £1m.
- 8.2 Except in the case of death, personal injury caused by Our negligence Our liability under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the Price paid by You to Us under this Agreement.
- 8.3 We shall not be liable to You for any indirect or consequential loss You may suffer, even if the loss is reasonably foreseeable or We have been advised of the possibility of You incurring it including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 8.4 We have no responsibility for the accuracy of technical or corporate statements made on your behalf on the basis of information received from you.
- 8.5 If material produced by us contains any error, or is delayed or otherwise does not happen as agreed between You and Us then We will not be liable to You unless this is caused by Our breach or neglect.
- 8.6 We cannot warrant any specific outcomes from any Work.
- 8.7 We shall not be liable to any party other than You.

## **9. Force majeure**

- 9.1 We shall not be deemed to be in breach of this agreement or otherwise liable to You for any delay in performance or any non-performance of any obligations under this agreement (and the Delivery Date shall be extended accordingly) if and to the extent that the delay or non-performance is due to an event or circumstance beyond Our reasonable control.

## **10. Waiver**

- 10.1 A waiver of any term or breach of this agreement shall be effective only if given in writing and signed by the waiving party.
- 10.2 No failure or delay on the part of any party in exercising any right under this agreement shall operate as a waiver of it, nor shall any single or partial exercise of any such right preclude any other or further exercise of it or the exercise of any other right.

## **11. Entire agreement**

- 11.1 These Terms & Conditions and the Proposal (with any documents referred to in them) include the entire agreement and understanding of the parties and overrides all other statements, representation, agreements, understandings or arrangements relating to the Work, and neither party shall be entitled to rely on anything such save for any right of action for fraudulent misrepresentation.

## **12. Variation**

- 12.1 These Terms & Conditions and the Proposal may only be varied by agreement in writing (which may include emails or messages in any project space).

## **13. Governing law and jurisdiction**

- 13.1 This agreement is subject to the law and the exclusive jurisdiction of the courts of England and Wales.

## **14. Dispute resolution**

- 14.1 If any dispute arises in connection with the Works provided under this Agreement You and We will attempt to settle it by mediation or another mode of Alternative Dispute Resolution (ADR) agreed by both of us.
- 14.2 No party may start court proceedings until it has attempted to settle the dispute under the procedures in this clause, and they have been completed or the other party has failed to participate, unless the party starting proceedings would be prejudiced by a delay.
- 14.3 This clause shall not apply to payments due from You to Us which must be paid pending resolution of any dispute.