Terms & conditions

These are the Terms and Conditions ("Terms") that govern our relationship with you. Please read them carefully to ensure you fully understand your rights and obligations. If you are in any doubt or need further explanation, please contact us immediately.

1. Definition

a. In these Terms the following words have the following meanings:

- "Confidential Information" means all information of a confidential nature (including trade secrets and information of commercial value) which may become known to us from you and vice versa ("Confidential Information") unless the information is public knowledge or already known to you or us at the time of disclosure or subsequently becomes public knowledge other than by breach of these Terms or subsequently comes lawfully into the possession of you or us from a third party;
- "Consulting Outputs" means the website, prototype, presentation or other material produced or reported by us to you in conjunction with you during or at the completion of the Project or a stage of the Project;
- "Contract" means the agreement for the provision of Services made in accordance with clause 2 and these Terms will be deemed incorporated within the Contract.
- "Costs" means direct expenses reasonably incurred by us in connection with the Services, including third party fees and disbursements;
- "Fees" means our professional charges, as detailed on our website, for time reasonably spent on Services and any additional Fees reasonably incurred by us and agreed by you in accordance with these Terms;
- "our IPRs" means any patent, registered or unregistered trade mark, copyright, registered design or unregistered design right, know-how, and any application for any of the foregoing, any rights in respect of our Confidential Information and any other intellectual property right in the Services, Project and/or Consulting Outputs or otherwise owned by us;
- "Project" means work we undertake for you pursuant to the Contract;
- "Services" means the provision by us of one or all of the following: (a) Project; (b) any other service undertaken by us for you;
- "Staff" means such employees, consultants and any other officers employed, recruited or contracted by us to provide the Services including for example a creative director, graphic designer or HTML builder;
- "us" "our" "we" means Square Eye Limited;
- "you", "your" means the person, firm or corporate body who engages our Services;
- "your IPRs" means any patent, registered or unregistered trade mark, copyright, registered design or unregistered design right, know-how, and any application for any of the foregoing, any rights in respect of your Confidential Information and any other intellectual property right owned by you.

2. Formation of the Contract

a. These Terms (as amended by us from time to time) apply to and shall be incorporated into the Contract. Our fee estimate constitutes an invitation by us to provide the Services specified in it on these Terms to you. When you agree to our fee estimate this constitutes an offer by you to purchase the Services on the basis of the fee estimate and these Terms (in the event of any inconsistency between the fee estimate and these Terms, the fee estimate will prevail). When we contact you to accept your offer, or begin work on the Services this shall establish the Contract between us.

b. The fee estimate represents our reasonable efforts to predict the course of the Services to meet your needs based on the information you have provided to us. Whilst we aim to make the fee estimate as accurate as possible, if the progress and duration of the Services is longer or shorter than we anticipated for reasons attributable to you e.g. as a result of you requesting an additional service or the information from you not being accurate, then (subject to clause 6.4 below) the final charges may be revised upwards or downwards and we reserve the right to amend our Fees accordingly. Our commitment is to inform you of any variations to the plan (and the reasons for them) as they occur such that any changes to our Fees, or the overall Costs do not come as a surprise.

c. Any additional Fees and/or Costs will be calculated in accordance with clause 3. These Fees and/or Costs will be recorded during the Services and billed to you at your next billing stage or at the end of the Services. We will try to advise you of these additional Fees and/or Costs when we become aware of them and, where possible, before we actually incur them.
3. Fees

a. Our fee structure is shown on our website. We reserve the right to amend this from time to time and we will provide advance notice of this.

b. In certain cases (at our sole discretion) we use third parties to provide services to you; Our Fees are exclusive of third party fees and third parties may quote for services at different rates.
   
   i. Where we need to instruct a third party to carry out work for you and there will be an additional cost to you we will obtain fee estimates from them and agree these fees separately with you, prior to instructing the third party to commence work.
   
   ii. We may also use third-party tools and services to enhance your website or digital marketing. Where such tools and services involve additional costs, we will clear them with you first. Where we use a third party at no additional cost to you we will not discuss this with you and we shall be permitted to use third parties to provide services as we see fit.
   
   iii. You may pay the costs above directly or, if you prefer, we will pay on your behalf and charge you the cost + a 20% administration fee.

c. All Fees and Costs quoted to you are exclusive of any Value Added Tax for which you shall be additionally liable at the applicable rate.

4. Our billing procedure

a. Our billing policy is shown on our website. We reserve the right to amend this from time to time.

5. Our payment terms

a. You shall pay each invoice submitted to you by us in full, and in cleared funds, within 30 days of receipt.

b. Without prejudice to any other right or remedy that we may have, if you fail to pay us on the due date we may:
   
   i. charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.
   
   ii. suspend all Services until payment has been made in full; and/or
   
   iii. terminate the contract for a material breach in accordance with clause 7.

c. Time for payment shall be of the essence in the Contract.

6. Cancellation and modification of Services

a. When instructed by you, we assign Staff to carry out the Services. As a result, we plan the use of our Staff and resources months in advance and turn down work for which we do not have adequate resources. Cancellation by you therefore causes us loss and so we reserve the right to charge you as follows:
   
   i. 100% charge for all work actually done and Costs incurred at the date of cancellation; and/or
   
   ii. 50% charge for any Fees budgeted and cancelled by you with less than 30 days' notice;

b. In the case of ongoing hosting or maintenance contracts, we require 30 days’ notice for cancellation unless otherwise agreed in writing.

c. Postponement of work by you will be treated as a cancellation (as we will have already made allowances to keep dates free) and will mean we have the right to charge you in accordance with sub clause 6.1.

d. We are happy to discuss changes and modifications of your instructions to us at any time, but you accept that such changes or modifications may result in our need to vary our Fees and Costs which have been included in our fee estimate. We will always try to confirm such changes in writing and these will be subject to agreement by you.

e. Substantial changes may require completion of the Services to be significantly delayed because of our need to reallocate resources. In this situation we reserve the right to cancel the Services and recover our Fees and Costs as described in sub clause 6.1 above. We will discuss rescheduling the new Services with you for which we will issue you with a new fee estimate.

7. Termination of the Contract

a. Either you or we may (without limiting any of our other remedies) at any time terminate the Contract immediately by giving written notice to each other if (a) the other commits any material breach of these Terms and Conditions and (if capable of remedy) fails to remedy the breach within seven days after being required by written notice to do so, or (b) either of us goes into liquidation, or (in the case of an individual) becomes bankrupt, makes a voluntary arrangement with his or its creditors
or (in the case of a firm) has a receiver or administrator appointed. You may also terminate the Contract by giving 30 days’ written notice to us.

b. All payments payable to us under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under statute, or any such right under the Contract.

c. This clause 8.3 only applies to you if we arrange the hosting of your website. In the event of termination of the Contract for any reason or should Square Eye enter into an event of insolvency (with no reasonable chance of recovery) we will provide the following to you within 5 working days of your initial request, or on a single subsequent date agreed between us:

i. FTP access to your hosting account allowing you to download a copy of your website and any uploaded attachments;

ii. administrator access for your database allowing you to export website data to SQL, CSV or other supported formats;

iii. transfer of your domain name to a registrar of your choice if it is held in our account;

d. There will be no charge for the one-off supply of files and data under clause 8.3; any requests for additional exports, or for exports in other formats, will be billed at our hourly rate and scheduled as a normal work request.

8. Liability

a. The following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and third party subcontractors) to you in respect of (a) any breach of the Contract; (b) any use made by you of the Services, the Consulting Outputs or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

b. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract but nothing in these Terms excludes our liability (a) for death or personal injury caused by our negligence; or (b) for fraud or fraudulent misrepresentation.

c. Subject to condition 8.2:

i. We shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for (i) loss of profits; or (ii) loss of business; or (iii) depletion of goodwill or similar losses; or (iv) loss of anticipated savings; or (v) loss of goods; or (vi) loss of contract; or (vii) loss of use; or (viii) loss or corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

ii. Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

d. We shall not be liable to you or be deemed to be in breach of our obligations to you by reason of any delay in performing, or any failure to perform, any of our obligations in completing the Services, if the delay or failure was due to any cause beyond our reasonable control.

e. From time to time we use third party suppliers to assist with the Services. In addition we resell services including (but not limited to) server space, domain names and email addresses from third party suppliers. As is the nature with services of this type they do, from time to time, temporarily stop working or other problems may occur. We do not accept any responsibility for the failure or otherwise of any services provided by a third party.

9. Delivery of consulting outputs and Intellectual Property Rights

a. Where applicable, once the Services have been provided the Consulting Outputs will be delivered to you provided you have paid in full all Fees and Costs that have accrued in accordance with the Contract.

b. Any of our IPRs we have in the Consulting Outputs shall be assigned to you (to the extent that they are required to be assigned to permit you to make use of the Consulting Outputs, including after the termination of the Contract) provided that you have paid in full all Fees and Costs for the Services due to us in accordance with the Contract.

c. If you require formal assignment of any of the intellectual property rights to be transferred to you under clause 9.2 you need to prepare the necessary documentation at your own cost, which we will complete and return to you providing you pay our reasonable costs for having the documentation reviewed.

d. We reserve the right to:

i. add a discreet accreditation for Square Eye, with a hyperlink to our website; and

ii. use designs and references to the work that we have done for you in our online portfolio or via other marketing methods.
e. For the avoidance of doubt:
   
   i. we are deemed to have been granted a license by you for all of your IPRs reasonably used by us in connection with the Services. You confirm that the use of your IPRs will not infringe the copyright or other rights of any third party and you will indemnify us against any loss, damages, costs, expenses or other claims arising from such infringement:
   
   ii. the property and any copyright or other intellectual property rights in our IPRs belong to us and you shall have no rights in our IPRs except for:
      
      1. any use which we specifically authorise when providing the Services (and in that case only for the purpose of carrying out the Services and not after completion of the Services); and/or
      
      2. insofar as we are required to assign any rights pursuant to sub clause 10.2.

10. General

11. The fee estimate and these Terms constitute all the arrangements on which we will both operate during the Services. Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement other than as expressly set out in the Contract. Any variation of the Contract shall be in writing and signed by or on behalf of both the parties. Any notice required or permitted to be given by either of us to the other under these Terms should be in writing addressed to the other party at its registered office or principal place of business or such other address as at the relevant time has been notified pursuant to this provision to the party giving their notice and delivered by hand, or sent by first class or recorded delivery post or sent via email (to such email address as each party nominates). No failure or delay by either of us in exercising any of our rights under the Contract shall be deemed to be a waiver of that right, nor any waiver by either of us 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. Neither party intends any of the terms of the Contract to be enforceable by any third party pursuant to the provisions of the Contracts (Rights of Third Parties) Act 1999. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England. The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

Contact

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