

## 1 // Definitions

'Us' or 'FDC' means FDC Studio Ltd, Phoenix Park, Telford Way, Coalville, LE67 3HB.

'You' means the person who accepts our quotation for work or whose order for work is accepted by us.

'Contract' means the contract for Goods and Services provided by us.

'Work' means the goods and/or services to be supplied to you in accordance with these conditions.

'Goods' means any material or products included in the Work.

'Conditions' means the standard terms and conditions set out in this document and includes any special terms and conditions agreed in writing between you and us.

'Services' means those services provided by us in furtherance of the Work.

'Hosting' means the provision of a shared or dedicated resources for the storage of website files, applications and email services, connected to a high speed network.

## 2 // Basis of trading

**2.1 //** These terms and conditions shall apply (for the avoidance of doubt the term 'terms and conditions' includes our service level agreements) in respect of your order for the Goods and/or Services specified in our order confirmation. Any order for Work shall be deemed an invitation to treat until such time as we have confirmed our acceptance of your order.

**2.2 //** We will provide the work in accordance with our written quotation which is accepted by you or any written order from which is accepted by us, subject in either case to these conditions, which shall govern the contract to the exclusion of any other terms and conditions.

**2.3 //** No variation to these conditions shall be binding unless agreed by our duly authorised representative in writing. In entering into the Contract you acknowledge that you are not relying on any representation understanding or statement contained in any brochure, price list or sales literature or any other representation, (whether oral or in writing,) which is not included or referred to in either these terms and conditions, our order confirmation or our service level agreement.

**2.4 //** You may not cancel any order which has been accepted by us unless we agree in writing. If we agree to the cancellation of an order

you will indemnify and keep us indemnified in full against all loss (including but not limited to loss of profit) costs damages claims and or actions incurred by us including but without limitation to third party claims which have arisen as a result of or in connection with your cancellation.

**2.5 //** The minimum contract term for hosting and technical support services is twelve months unless otherwise stated. Fixed term contracts will be renewed automatically for further periods of 12 months at the end of the term unless terminated in accordance with these terms and conditions.

**2.6 //** Unless otherwise confirmed by us in writing the quality, quantity and description of the Goods and/or Services shall be as set out in the quotation. You will be responsible for ensuring the accuracy of the terms of any order. Where we are to supply Goods and/or Services to a specification supplied by you, you shall deliver to us all necessary information (including details of any design or plan) in sufficient time to enable us to supply the Goods and/or provide the Services by any dates estimated for delivery of the Goods and/or performance of the Services. Time is not of the essence in the delivery of the Goods and/or performance of the Services and we shall not be held liable in any respect for our failure to meet the estimated date of delivery.

**2.7 //** You shall indemnify us against all losses, expenses, damages and costs incurred by us as a result of our use of any design or plan supplied by you including (but not limited to) those incurred by us in respect of any claim by a third party for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right or for negligence, whether in respect of personal injury or death or otherwise.

**2.8 //** Where a design is provided by us exclusively and in absence of any prior written agreement between both parties, all patent, copyright, design, trademark or other industrial or intellectual property rights shall remain vested in us. You will be granted a perpetual non-exclusive licence to use the design.

**2.9 //** We may make any changes in the specification of the work which are required to conform with any applicable safety or other statutory requirements or, where the work is supplied to your specification, which do not materially affect their quality or performance. In the event that you wish to make amendments to your order after work has commenced or you require us to undertake work which has not been specifically quoted for by us you will be liable for the cost of the additional work undertaken. In such event we will issue you a revised quotation incorporating these changes.

**2.10 //** When proofs of work are submitted for your approval prior to print origination and prior to print and whereas every care will

be taken to correct errors we will not be responsible for any not corrected by you in proofs so submitted.

## 3 // Pricing and payment

**3.1 //** We reserve the right to obtain payment of up to 50% of the agreed estimate prior to commencement of the work and or require the price to be paid in staged payments.

**3.2 //** Unless otherwise specifically agreed by us in writing all prices quoted are valid for 30 days only. We reserve the right to withdraw or alter any quote at any time before it is accepted by you without notice. All prices are exclusive of VAT which will be payable at the prevailing rate duties, insurance, carriage, set off or abatement.

**3.3 //** We may at anytime whether before or during work, increase the price of the Goods and/or Services to reflect an increase in costs which is caused by any change to quantities or specifications requested by you or any delay caused by you. Additionally we reserve the right to charge you for any out of pocket expenses which we reasonably incur and we shall on your request supply you with evidence of payment of such expenses. We also reserve the right to pass on any increase in costs from any suppliers we use to you.

**3.4 //** Where the Goods or Services are provided to you in instalments, while each instalment will constitute a separate contract, our failure to provide one or more of the instalments shall not entitle you to terminate the contract as a whole.

**3.5 //** We may submit invoices or further invoices in respect of any increased or additional costs at any time up to 60 days following the date of delivery of the work notwithstanding that any previous invoice in respect of the contract may have been issued.

**3.6 //** We may submit interim invoices prior to the completion of the contract and expenses incurred.

**3.7 //** Our invoices must be paid in full before any website going 'live' and/or on receipt of goods delivered to you.

**3.8 //** Websites: Final payment is due upon the completion of your site's development and is required a minimum of 1 week before the site launches. Your project's schedule will be provided after your design brief meeting and you will be required to sign these dates off before work commences. We are not responsible for any delays in providing site content, the launch date is fully flexible however the account must be settled as per the agreed and signed timeframes for the project.

**3.9 //** Unless otherwise agreed by us in writing the contract price for the goods and services shall be payable as per the payment terms agreed on the quotation within 4 weeks of the date of signing. Should

payment not be received within our payment terms then we reserve the right to collect the full contract amount due regardless of any work taking place or not.

**3.10 //** We reserve the right to charge a £25 late fee for any invoice not paid on the date that it's due. An administration fee of £100 may be added to any outstanding account over 60 days, for each and every letter chasing payment, a minimum charge of 15% of the outstanding debt will be added to the contract value if it becomes necessary to instruct debt collectors. Any legal fees that we incur in relation to you will be invoiced and recoverable within 7 days.

**3.11 //** In the event of receiving an unfavourable credit report on you from our own sources we reserve the right to terminate this agreement or change the terms of payment at any time before delivery of the goods and services to you.

**3.12 //** Direct Debit payments for monthly recurring invoices will be taken on the date of your invoice as stated in your signed contract. Any additional work will be invoiced and payable separately. You have the right to cancel the direct debit at any time. An admin fee of £25 will be charged if a payment is missed, causing the invoice to be overdue, this applies to all recurring invoices.

**3.13 //** In the event where you are unable to commence the project after 30 days have passed since the initial signing of the contract, FDC reserves the right to request full payment up to the total value of the contract, and/or issue further charges related to administration costs or loss of studio working time.

**3.14 //** If payment for any services is not paid on our terms and not received 7 days after due date FDC has the right to remove, suspend, delete any services and accounts associated to those services, including services and accounts provided through our third party suppliers. You will indemnify and keep us indemnified in full against all loss (including but not limited to loss of profit) costs damages claims and or actions incurred by us including but without limitation to third party claims which have arisen as a result of or in connection with your breach of these payment terms.

## 4 // Retention of title to goods

**4.1 //** You will own goods only once the goods and all other goods and services supplied to you by us have been paid for you in full. Until then they belong to us. Until ownership of the goods has passed to you, you will hold the goods on a fiduciary basis as our bailee

**4.2 //** You will not use the goods in any manufacturing process or give, pledge, lend or otherwise dispose of them (unless we give you written permission to do so).

**4.3 //** You will ensure that the goods can be identified and separated from other goods held by you by storing separately or labelling them and by keeping stock records. Until all sums owing to us have been paid in full and in cleared funds you shall properly store, protect and insure the goods against loss or damage and in the event of a relevant claim shall hold the proceeds of such insurance on our behalf as our trustees.

**4.4 //** Until the goods belong to you we may at any time require you to return the goods to us and, if you fail to do so immediately, to enter any of your premises or any third party premises where the goods are stored and repossess the goods.

## 5 // Delivery of goods

**5.1 //** Delivery of the goods is made when the goods are available to you or your agent or any carrier (who will be your agent whoever pays his charges) at our premises or other delivery point. You will keep them stored properly and protected from damage and insure them to full reinstatement value.

**5.2 //** We may deliver the goods in instalments in any sequence and any default or failure on our part in respect on one or more instalments will not terminate the contract in respect of any goods previously delivered or yet to be delivered.

**5.3 //** If a price is quoted for delivery then, unless otherwise specified the price quoted is for delivery for the goods to your address as set out in the contract and a charge may be made to cover any extra costs involved for delivery to a different address.

**5.4 //** If you fail to take delivery of the goods or any part of them on the due date or fail to provide any instructions, documentation, licenses, consents or authorisations required to enable the goods to be delivered on the due date we may store or arrange for the storage of the goods until actual delivery and charge you for the reasonable costs (including insurance) of storage.

**5.5 //** You shall be responsible for inspecting the goods on delivery for any apparent defects. If any defects are discovered during this inspection, you must notify us within 3 days of delivery. Your acceptance will be made to us either by expiry of 3 days without notice that the Goods are defective or by virtue of you or your representative either confirming acceptance of the same. Anybody presenting themselves to us as acting on your behalf in order to accept the Goods shall be deemed to be your representative and as such has all relevant authorities to sign the delivery receipt confirming your acceptance of the Goods.

## 6 // Claims

**6.1 //** We hereby warrant that all services will be performed with all due skill and care and unless otherwise stated, that the Goods supplied will be free from defects and by way of remedy in respect of the services shall at our option either (1) repair or (2) replace or (3) offer a full or partial refund or (4) any combination of (1), (2) or (3) PROVIDED THAT

**6.1.1 /** the defect was not capable of being apparent on inspection (or in the case of bugs on websites we have built, the bug arises within 12 months of us building the website).

**6.1.2 /** the defect complained of is not due to a fault with the specification provided by you.

**6.1.3 /** the goods (where relevant) have been properly maintained and fitted in accordance with our recommendations.

**6.1.4 /** you notify us within 3 days of delivery.

**6.1.5 /** any goods alleged to be defective have been stored in a secure place and made available to us together with the original packaging for inspection on our request.

**6.1.6 /** no attempt by any third party or you has been made to remedy the defect.

**6.1.7 /** we have confirmed the defect.

**6.2 //** Where the damage to the goods does not prohibit its movement it is your responsibility to deliver the Goods to our premises where it is to be repaired. You will remain liable for any expenses incurred as a result of meeting this obligation. We will only reimburse you for any costs incurred where it is in our sole opinion reasonable to do so and only after prior written notice of an expenses claim has been submitted to us before delivery of the goods. For the avoidance of doubt, written confirmation as to an expenses claim being submitted will not necessitate our payment of it.

**6.3 //** We will not be liable for any claims, unless the above requirements have been complied with.

**6.4 //** No warranty, guarantee or other term relating to quality or fitness for purpose is given in respect of the goods supplied by us.

## 7 // Liability

**7.1 //** Subject as expressly provided on these conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**7.2 //** Where any valid claim in respect of any work which is based on any defect in the quality condition of the work or its failure to meet

specification is notified to us, we may replace or re-supply the work (or the part in question) free of charge or, at our discretion, refund to you the price of the work (or a proportionate part of the price), but we will have no further liability to you.

**7.3 //** Except in respect of death or personal injury caused by our negligence, we will not be liable to you by reason of any duty at common law, or under the express terms of contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs expenses or other claims for consequential compensation whatsoever (and whether caused by our negligence of our employees or agents or otherwise) which arise out of or in connection with the supply of work or its use or resale by you except as expressly provided in these conditions.

**7.4 //** If we are liable in accordance with the terms of the contract for some or part of the work the contract will remain in full force in relation to the other parts of the work and no set-off or other counterclaim will be made by you against or in respect of such other parts of the work.

**7.5 //** You may not bring a claim for any defect arising from any design or specification provided or made by you or if any adjustments, alterations, adaptations or other works have been made by any person other than us.

**7.6 //** We will have no liability to you if we are unable to carry out any provision of the contract for any reason beyond our reasonable control.

**7.7 //** 'An event of force majeure' means an event or circumstance beyond our reasonable control including (but without limitation to) any act of God, failure or shortage of power supplies, the act or omission of any telecommunications carrier, internet service provider. We shall not be deemed to be in breach of these terms and conditions or otherwise liable to you for any delay in performance or any non-performance of our obligations in providing the Goods or Services if and to the extent that the delay or nonperformance is due to an event of force majeure.

## 8 // Hosting

**8.1 //** You acknowledge that you have no right, title or interest in any IP address allocated to you by us and that any IP address so allocated is done so as part of the Services and is not portable or otherwise transferrable by you in any manner whatsoever. You agree that you will have no right title or interest in the IP address upon termination of this agreement and that the acquisition by you of a new IP address for your website following termination of this Agreement shall be your exclusive responsibility.

**8.2 //** If an IP address is renumbered or reallocated by us, we shall use reasonable endeavours to avoid any disruption to you.

**8.3 //** If and to the extent that you require use of any software supplied by us in order to use the Services we shall grant you a royalty-free, worldwide, non-transferrable, non-exclusive licence to use the same in object code form only. You have the right to authorise your employees, agents and third party consultants (if any) and contractors to use the same as aforesaid provided that such use is consistent with these terms and conditions.

**8.4 //** You agree to grant to us a royalty-free, worldwide, nonexclusive licence to use any software supplied by you in relation with performing our obligations under these terms and conditions in connection with providing the Services.

**8.5 //** For the avoidance of doubt nothing in clauses 8.3 and 8.4 above transfers or grants any right title interest or intellectual property rights in the software so used and it is hereby agreed that you will make no copies of any software provided by us save whereby our express written consent is given.

**8.6 //** The website we host for you shall be available to visitors pursuant to the Services for that time as specified in our service level agreement. Where the website is not so available you will be credited with an amount calculated monthly as an aggregate of all downtime events. For the purposes of these terms and conditions 'Downtime' means any service interruption in the availability to visitors of the website pursuant to provision of the Services but only if the interruption is due to a default by us resulting in Downtime.

**8.7 //** Outages, including emergency and previously scheduled windows for router, switch or server maintenance, are not to be included in Downtime calculations. We shall take all commercially reasonable efforts to provide you with previous email notification of all scheduled and emergency outages. We shall notify you of any report of Downtime and investigate it using suitably qualified personnel as soon as reasonably practicable after becoming aware of it and shall remedy the Downtime as soon as reasonably practicable.

**8.8 //** You shall not distribute any content on the website any material or other information that:

**8.8.1 /** infringes any intellectual property rights;

**8.8.2 /** is in breach of any law, statute or regulation;

**8.8.3 /** is defamatory, libellous, unlawfully threatening or harassing;

**8.8.4 /** is obscene, pornographic or indecent; or

**8.8.5 /** contains any viruses or other computer programs intended to damage, detrimentally interfere with, surreptitiously intercept or

expropriate any personal information.

**8.9 //** For the further avoidance of doubt, we shall have no liability for the contents of any communication transmitted by virtue of the Services.

**8.10 //** You acknowledge and agree to grant to us a non-exclusive, royalty free licence during the period when we provide the Services to use store and maintain content on a server for the purposes of providing the Services in accordance with these terms and conditions. We shall be entitled to make such copies as may be necessary to perform our obligations herein, including back up copies of content. For the avoidance of doubt, nothing in this clause transfers or grants us any right title or interest in any intellectual property rights in your content, except for any rights expressly granted herein.

**8.11 //** You warrant to us that:

**8.11.1 /** our use of your content or software supplied by you shall not infringe any third party intellectual property rights.

**8.11.2 /** you have the right power and or authority to licence the content and your software to us.

**8.12 //** We shall accept no liability for any loss of data. Where backups are provided, no liability can be accepted for their integrity.

**8.13 //** Our hosting service will be available 99.9% of the time in any given month. No liability is accepted for downtime of the server unless this downtime for the term of the contract exceeds 0.1% of the possible available time (calculated monthly). In the event of downtime in excess of this level we will credit back 50% of the monthly charge payable by you. Clients must request such credit within seven days after service unavailability. This uptime guarantee does not relate to speed of page delivery, or page loading which may be affected by the client's internet connection speed or other factors beyond our control.

**8.14 //** The minimum hosting term is twelve months unless otherwise stated. Hosting will be renewed automatically for further periods of 12 months at the end of the term unless terminated in accordance with these terms and conditions. If you wish to terminate the agreement we require thirty days written notice prior to the renewal date, where a charge may be incurred for termination. We may terminate this agreement at any time by providing you with thirty days' notice. In this case, we will return all files to you on CDROM.

**8.15 //** If you choose to store credit card information on your website, you do so at your own risk. As the administrator for your website, you are responsible for deleting the customers order after processing to ensure the details are removed. We can provide secure credit card processing at extra cost, if so required.

**8.16 //** We may include footer links on any page of any website hosted with us. We will ensure these footer links are styled in a non-intrusive font and style in order to avoid these links becoming prominent in the website design. These links will be included unless expressly requested otherwise by you.

**8.17 //** Where you provide the hosting provision (or an alternative third party suggested by you) we reserve the right to charge for investigation of this hosting provision prior to use, and for uploading of the website and testing on this provision.

**8.18 //** We reserve the right to suspend any website where the web hosting has expired and renewal fee is outstanding. We reserve the right to charge a £50 fee to re-activate any website taken offline due to non payment of hosting fees. Web hosting accounts not renewed after being suspended for 30 days will be permanently closed and all website files deleted.

## 9 // Miscellaneous

**9.1 //** Any notice required to be given by either of us to the other shall be in writing addressed and posted first class to the relevant party's registered office or principal place of business and shall be effective on the third day of posting.

**9.2 //** No waiver by us of a breach of any provision in these terms and conditions by you shall be considered as a waiver of any subsequent breach of the same or any other provisions.

**9.3 //** If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions and the remainder of the provision in question shall not be affected.

**9.4 //** We may terminate the Agreement without penalty or compensation between us immediately if you become unable to pay your debts or enter into compulsory or voluntary liquidation (other than for the purpose of affecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different entity shall agree to be bound by and assume your obligations under these terms and conditions) or if you compound with or convene a meeting of your creditors or have a receiver or manager or an administrator appointed of your assets or cease for any reason to carry on business or take or suffer similar action which in our opinion means that you may be unable to pay your debts.

**9.5 //** The Contracts (Rights of Third Parties) Act 1999 shall not apply to these terms and conditions.

**9.6 //** These terms and conditions shall be governed by the laws of



# Terms and Conditions

01 October 2014

England and Wales.

**FDC Studio LTD**

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