

## **Third Dimension Limited**

### **Standard Terms of Business**

These terms of business ("Terms") govern the relationship between Third Dimension Limited ("the Supplier") and its client ("the Client") in relation to any services provided by the Supplier to the Client and form the basis of the contract between the parties ("the Contract").

With the exception of any variations to the Terms agreed in writing between the parties, other than stated in the Terms, the Terms shall apply to any services carried out by the Supplier for the Client.

The parties agree that:

#### **1. The Contract**

- 1.1. Upon each occasion that the Supplier supplies its services ("the Services"), which shall include the publishing of a web site or developing any other application or meeting projected milestones or any goods such as DVD's or additional material supplied, the Terms shall apply to the Contract between the Supplier and the Client.
- 1.2. Specific matters agreed between the parties forming part of the Contract shall be stated in a separate written Proposal, which shall be valid only for 28 days from the date of submission and shall be strictly conditional upon these Terms.
- 1.3. The Contract may be varied by agreement and in writing between the Parties but, in the absence of any such agreement, the Terms shall apply.
- 1.4. If the Client makes unreasonable demands or amendments to the Proposal, which in the reasonable opinion of the Managing Director of the Supplier are not feasible on financial, technical or practical grounds, the Supplier reserves the right to regard such demands as a justifiable reason for termination of the contract. The Supplier shall be entitled to charge pro rata for the work it has carried out in its reasonable opinion and shall not be required to complete the Services or publish the web site forming part of the Services.
- 1.5. In the event of minor changes to its work outside the parameters of the agreed Proposal or after the initial work has been completed and in excess of the Contract Price, and in the absence of any agreement as to the cost of providing such work, including investigative and background work including research, the Supplier may make a reasonable charge for its work based on its standard hourly or daily rate, depending on the amount of time taken. For the avoidance of doubt, the Company's standard rates are:
  - 1.5.1. Hourly rate: £45.00 (plus VAT).

#### **2. Performance**

- 2.1. The Supplier shall perform the Contract with reasonable skill, experience and promptness.
- 2.2. Time shall not be of the essence unless agreed in writing between the parties.

- 2.3. In the event of delay, due to an event or action by a third party beyond either party's control or power, the Supplier shall have a further reasonable time in which to perform the Contract.
- 2.4. If the delay in the performance of the Contract is due to the actions of or omissions of the Client, the Supplier shall be entitled to a reasonable further period of time in which to perform the Contract and compensation for any costs or losses, including loss of profit, it suffers as a result of such delay.
- 2.5. Any liability of the Supplier due to its actions or omissions, may entitle the Client to recover any reasonable losses directly arising from such actions or omissions, but limited to the Contract Price (as defined below) for the Services limited to the Contract Price for the stage or specific Services directly complained about (and not relating to other parts of the Services or other contracts between the parties) or sums recoverable under any insurance policy maintained by the Supplier for that purpose.
- 2.6. Upon completion of the Services agreed under the Contract, as described in the Proposal (or as agreed between the parties in writing) and in the reasonable opinion of the Supplier, the Client shall sign off the Contract as completed to its reasonable satisfaction. If the Client fails to notify the Supplier in writing of any specific reason why the Contract has not been completed to its reasonable satisfaction, within 14 days of the Supplier notifying the Client that the Contract has been completed, then the Contract shall be deemed to have been signed off by the Client as completed to its reasonable satisfaction.
- 2.7. If the Client finds and reports to the Supplier, as a written complaint, any errors in the web site or any other application, supplied as part of the work carried out by the Supplier as part of the Contract:
  - 2.7.1. If, within three months of being notified in writing that the Contract has been completed, the Supplier shall rectify such errors free of charge to a reasonable standard in accordance with the scope of the original Proposal or as subsequently agreed in writing;
  - 2.7.2. If reported after three months following notification in writing that the Contract has been completed, the errors will be rectified under the terms of an ongoing maintenance agreement (if agreed between the parties) or on a "time and material basis" agreed between the parties in writing;
  - 2.7.3. If any changes or enhancements to the web site or any other application forming part of the Services are required by the Client, which are outside or in addition to the scope of the original Proposal, these changes will be:
    - 2.7.3.1. Provided subject to a separate or additional proposal agreed in advance in writing between the parties; or
    - 2.7.3.2. Provided under the terms of an ongoing maintenance agreement (if agreed between the parties and stated clearly in the Proposal dealing with such maintenance agreement); or

- 2.7.3.3. If no such amended Proposal is agreed and the changes are relatively minor, the Client will be charged on a reasonable "time and material basis" at the Supplier's normal rates;
- 2.8. The web site or any other application provided by the Supplier as part of the Services shall be required to meet a standard as reasonably fit for purpose. If the Client has any specific or unusual requirements for the web site, such requirements must be stated in writing by the Client and agreed by the Supplier as part of the Proposal. The Supplier shall not be responsible for the web site's Google ranking.
- 2.9. If any third party, including any person employed by the Client, alters or amends or changes the web site or any other application or any back office software supporting the web site or any other application, any warranty relating to any of the Services carried out under the Contract will become void, so far as that interference affected the web site, whether directly or indirectly.
- 2.10. The Supplier shall not be responsible for the performance or the success of the web site or application it has devised in achieving the objectives of the Client.
- 2.11. The Client remains responsible for its own back ups and virus protection systems, choice of website hosting provision, equipment and internet provider and maintaining domain renewals at all times and in particular the Client shall be responsible for checking that the web site is virus free when installed and run.
- 2.12. Any failure by the Internet Service Provider to provide ongoing support shall not be the fault or liability of the Supplier and the Client shall be entirely responsible for its choice of Internet Service Provider at all times.

### **3. Payment terms**

- 3.1. The Client shall pay the agreed price or fees ("the Contract Price") to the Supplier within 14 days from the date of invoice without any deduction or withholding on account of any rights of equitable set off which the Client may claim.
- 3.2. The Contract Price is subject to VAT.
- 3.3. In the event of late payment or non payment of the Contract Price by the Client, the Supplier may suspend performance of the Contract and exercise its rights generally under the Late Payment of Commercial Debts Act 1999 and related legislation.
- 3.4. If any invoice remains outstanding beyond the date it was due to be paid, the Supplier may, in its absolute discretion, cease to provide any further work for the Client until payment in full for all work to-date has been received.
- 3.5. The intellectual property rights in any of the web sites devised and provided as part of the Services ("the IPR") will be licensed to the Client for use. However, any of the IPR is reserved until payment in full is received by Third Dimension. In addition, the license may be withheld in the event of non-payment in connection with any other work carried out by the Supplier for the Client or in the event of any breach of this contract. The insurance risk in the IPR remains with the Client at all times after delivery.

- 3.6. If the Client is a company, the instructing director or liaison person appointed by the Client is deemed to have authority to bind the Client company, as a director, and, in the event that the Client is unable or unwilling to settle the Contract Price on the due date, that person shall be deemed to be personally liable for payment of the Contract Price on behalf of the Client and jointly and severally liable with the Client.
- 3.7. If the Client requires changes to the proposal, after the initial proposal has been accepted by the Client and agreed between the parties, and if the parties have failed to agree a specific price for any such changes, the Supplier may make a reasonable charge for such changes.
- 3.8. If the Client decides to withdraw from the Contract in breach of these terms, the parties may agree terms to settle the dispute but the Supplier shall remain entitled to charge the Supplier pro rata for such work as it has already carried out and in respect of such disbursements it has already incurred or committed to paying.

#### **4. Relationship between third parties**

- 4.1. In the event that the Supplier provides a website facility to a Client, who uses the website to sell goods, the Client shall be responsible for providing his own terms and conditions in respect of its agreement with its own customers and purchasers of goods from such website. The Supplier shall not be liable for any claims arising from the website or suffered by the Client, whether financial or reputational, or from any claims by any third party payment provider or due to the actions or omissions of any third party payment provider.
- 4.2. Any liability arising from any breach of security, fraud or loss suffered by the Client due to the negligence or act or omission of the payment provider or any other third party shall not be the liability of the Supplier. The Client may seek redress from the payment provider or such third party as it shall determine in its own discretion. The Supplier shall not be liable for any act or omission by the Client in respect of the Client's losses due to its failure to keep its own payment systems details secure and must take third party advice in respect of the efficacy of such systems and providers.

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

- 5.1. The ownership of the background software forming the IPR in any web site or any other application or other software or graphics devised for the Client by the Supplier shall remain the property of the Supplier, which hereby licences the Client to use it subject to the rights of the Supplier below.
- 5.2. The licence to use the IPR supplied by the Supplier for use in the web site or any other application developed as part of the Services shall be suspended pending payment in full of the Contract Price. Once the Supplier has received the Contract Price in full, it shall licence the Client to use the IPR for the purposes indicated in the Proposal.
- 5.3. For the avoidance of doubt, background software includes any code or techniques previously developed or owned by the Supplier, or that has not specifically been developed for the Client and charged for as an itemized deliverable. Examples of such code (but not exclusively) are DLLS, SQL/XML Schemas and Content Management Pages.

- 5.4. In the event of the Client subsequently wishing to cancel services or support from the Supplier, the Supplier will, if requested and at a reasonable charge, supply a copy of the delivered executable software, but not the source code relating to any background software. The supply of this executable software will be strictly on the understanding that all Supplier IPR will be respected. Software and code subject to Supplier IPR will not be permitted to be re-sold to a third party or reverse-engineered without the prior, written authority of the Supplier. The Supplier reserves the right to refuse such permission at his absolute discretion.
- 5.5. If the Client alters or amends any web site or any other application or other software or graphics, devised for the Client by the Supplier, the Client shall first seek and obtain permission from the Supplier to do so. If the Client fails to obtain such permission, such alterations or amendments may invalidate any warranty on the web site or any other application supplied by the Supplier.
- 5.6. The Client warrants that it is at liberty to use any graphics, database, information, trade mark, name, search information, logo, design or other items it provides to the Supplier for use on the web site or any other application provided by the Supplier shall be the property of the Client and warrants that the Supplier is free to use such items and that the Client is entitled to the use of such IPR free of any third party rights. The Client shall remain responsible for checking that the content of the web site or any other application supplied does not conflict with the rights of any third party.

## **6. General**

- 6.1. The parties agree that the Contract (Rights of Third Parties) Act 1999 shall be excluded from this agreement, save that the Client shall be entitled to seek damages from any third party which has provided its Services to the Supplier as part of the Services under the Contract.
- 6.2. Any dispute between the parties under the Contract shall first be brought to the notice of the parties in writing and they shall attempt to resolve the dispute informally. If the dispute cannot be resolved informally within a period of 14 days after the written complaint has been sent by recorded delivery to the other party but the second party has failed to rectify the matter, and the dispute does not amount to a fundamental breach of contract, the parties shall use their reasonable endeavours to resolve the dispute by mediation, carried out in good faith, under the procedure and using mediators provided by Alternative Dispute Resolution Limited, Grove House, Bristol.
- 6.3. If any provision of the Contract is prohibited by law or judged by a Court to be unlawful, void or unenforceable, such provisions shall, to the extent required, be severed from the Contract and be rendered ineffective as far as possible without modifying the remaining provisions of the Contract and shall not in any way affect the validity of the remaining provisions.
- 6.4. The Contract shall be interpreted in accordance with English Law and subject to the non-exclusive jurisdiction of the Courts of England and Wales.