

Terms of Business

WEBSITE DEVELOPMENT

These terms and conditions (Terms) govern the provision of all services provided by Black and White Web Development Ltd (Black and White).

These Terms are published on Black and White's website and are incorporated by reference into the Proposal. By signing the Proposal, the Customer acknowledges that it has read, understood and agrees to be bound by these Terms, which together with the Proposal shall form the entire agreement between the parties.

01 Interpretation

01.1 ♦ The following definitions apply to these Terms:

Acceptance Tests: the tests to be carried out on the Site during the Review Phase, as described in the Proposal.

Build Fee: means the fee payable by the Customer in respect of the Development Phase, being the fee charged by Black and White for the design, building and delivery of the draft Site, as set out in the Proposal.

Business Day: a day other than a Saturday, Sunday or public holiday in England, on which banks in London are open for business.

Charges: the charges in respect of the Services comprising the Development Fee, the Build Fee and the Publication Fee, together with any sums due under a Change Control Notice.

Customer: the person, firm or company that instructs Black and White to provide Services as confirmed in the Proposal.

Confidential Information: all information, whether technical or commercial (including all specifications, drawings and designs, disclosed in writing, on disc, orally or by inspection of documents or during discussions between the parties), where the information is:

- (a) identified as confidential at the time of disclosure; or
- (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure.

Data Protection Legislation: means all applicable data protection legislation, including the UK General Data Protection Regulation and the Data Protection Act 2018, and the terms "Controller", "Processor", "Personal Data", "Processing" and "Data Subject" shall have the meanings given to them in the Data Protection Legislation.

Development Fee: means the fee payable by the Customer upon signature of the Proposal, as set out in the Proposal, representing an initial payment required to commence the Development Phase.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights 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.

Materials: the content provided to Black and White by the Customer from time to time for incorporation in the Site.

Non-Supplier Defects: those defects described in clause 5.2.

Proposal: the document setting out the services to be provided by Black and White to the Customer, including the timeframe for delivery and the Charges.

Publication Fee: means the fee payable by the Customer upon publication of the Site in respect of the Publication Phase, as set out in the Proposal.

Services: the website development services to be provided pursuant to these Terms as set out in the Proposal.

Site: the website to be developed in the performance of the Services.

Site Systems: any and all platforms, systems, environments and infrastructure forming part of or connected to the Site, including the content management system, hosting environment, domain name settings, administrative portals, databases, third-party integrations, plugins, themes, extensions and any associated software components, in each case as delivered to the Customer upon publication of the Site or as subsequently added, modified or updated by or on behalf of the Customer.

- 01.2 ♦ Clause and Schedule headings do not affect the interpretation of these Terms.
- 01.3 ♦ In the event of any conflict or inconsistency between these Terms and the Proposal, the provisions of the Proposal shall prevail to the extent of such conflict or inconsistency.
- 01.4 ♦ References to content include any kind of text, information, image, or audio or video material which can be incorporated in a website for access by a visitor to that website.
- 01.5 ♦ Black and White reserves the right to amend these Terms from time to time by publishing an updated version on its website. Any amendments shall not affect the terms of any Proposal already in force at the date of publication of the amended Terms, unless otherwise agreed in writing by the parties.

02 Scope of Services

- 02.1 ♦ Black and White shall deliver the Services in accordance with the Proposal.
- 02.2 ♦ Where additional requirements are identified, these shall fall outside the Proposal and shall be separately reviewed and, if necessary, costed as a Change Request in accordance with clause 13 below.

03 Customer responsibilities

- 03.1 ♦ The Customer acknowledges that Black and White's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any information the Customer provides to Black and White. Accordingly, the Customer shall:

- (a) provide Black and White with access to, and use of, all information, data and documentation reasonably required;
- (b) approve or provide feedback as required promptly and by agreed deadlines; and
- (c) be responsible for the accuracy and completeness of the Materials on the Site in accordance with clause 9.

04 Third party products

- 04.1 ♦ Any third party products used in the delivery of the Services shall be supplied in accordance with the relevant licensor's standard terms, and any licence fee for such products is included in the Charges payable under clause 5.1.

05 Phases, Charges and payment

- 05.1 ♦ The Services shall be delivered in the following phases (each a Phase):
- (a) Discovery: Black and White shall conduct an initial discovery meeting with the Customer, following which the Proposal shall be presented to the Customer. No Charge shall be payable by the Customer in respect of this Phase.
 - (b) Development: This Phase shall commence only upon the Customer's written approval of the Proposal and payment of the Development Fee, which shall be invoiced upon signature of the Proposal. During this Phase, Black and White shall build and deliver a draft of the Site to the Customer, together with an invoice for the Build Fee.
 - (c) Review: This Phase shall commence upon payment by the Customer of the Build Fee. During this Phase, the Site shall be tested against the Acceptance Tests, Customer feedback shall be sought, and any agreed amendments shall be incorporated, provided that a maximum of two (2) reviews by the Customer shall be undertaken, and subject always to the submission and approval of a Change Control Notice where applicable. The Customer shall provide any feedback in writing within three (3) Business Days, the first such period commencing upon payment of the Build Fee and each subsequent period commencing upon Black and White making a revised version of the Site available for review. If the Customer does not provide feedback within the applicable period, the Site shall be deemed accepted by the Customer in respect of that review.
 - (d) Publication: Upon completion of the Review Phase, the Site shall be published and the Publication Fee shall be invoiced.
- 05.2 ♦ If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom Black and White has no responsibility (Non-Supplier Defect), the Site shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect.
- 05.3 ♦ The Customer must pay all Charges within twenty-one (21) days of the date of invoice.

- 05.4 ♦ Any queries or disputes regarding an invoice must be raised in writing within 7 days of the date of invoice. After this period, the invoice shall be deemed accepted in full.
- 05.5 ♦ If the Customer fails to make any payment due to Black and White under these Terms by the due date for payment, then, without limiting Black and White's remedies under clause 11:
 - (a) Black and White may suspend or withhold the Services, including declining to publish or continue work on the Site; and
 - (b) the Customer shall pay interest on the overdue sum which shall accrue each day at 4% a year above the Bank of England's base rate from time to time.

06 Warranties

- 06.1 ♦ Each of the parties warrants to the other that it has full power and authority to enter into and perform these Terms.
- 06.2 ♦ Black and White shall perform the Services with reasonable care and skill.
- 06.3 ♦ Black and White does not warrant that:
 - (a) the Customer's use of the Services, the Site or the Site Systems will be uninterrupted or error-free; or
 - (b) the Services, the Site or the Site Systems will be free from vulnerabilities

07 Limitation of liability

- 07.1 ♦ Nothing in these Terms limits any liability which cannot legally be limited including but not limited to Black and White's liability for:
 - (a) death or personal injury caused by its negligence;
 - (b) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (c) fraud or fraudulent misrepresentation; or
 - (d) any other liability which cannot be excluded or limited under applicable law.
- 07.2 ♦ Subject to clause 7.1:
 - (a) Black and White shall have no liability for any loss of profits, loss of business, wasted expenditure, depletion of goodwill, loss or corruption of data, or any special, indirect or consequential loss, costs, damages, charges or expenses.
 - (b) Black and White's total aggregate liability to the Customer (including in respect of the indemnity at clause 8.3), for all breaches of duty in any calendar year shall not exceed the total Charges paid under the relevant Proposal in that year.

- 07.3 ♦ References to liability in this clause 7 include every kind of liability arising under or in connection with these Terms including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 07.4 ♦ Nothing in these Terms excludes the liability of the Customer for any breach, infringement or misappropriation of Black and White's Intellectual Property Rights.

08 Intellectual property rights

- 08.1 ♦ All Intellectual Property Rights in the Site (including in the content of the Site), but excluding the Materials, arising in connection with these Terms shall be the property of Black and White, and Black and White hereby grants the Customer a non-exclusive licence of such Intellectual Property Rights for the purpose of operating the Site.
- 08.2 ♦ The Customer shall indemnify Black and White against all damages, losses and expenses arising as a result of any action or claim that the Materials infringe the Intellectual Property Rights of a third party.
- 08.3 ♦ Black and White shall indemnify the Customer against all damages, losses and expenses arising as a result of any action or claim that the Site infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 8.2.

09 Site content

- 09.1 ♦ The Customer shall ensure that the Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).
- 09.2 ♦ The Customer shall indemnify Black and White against all damages, losses and expenses arising as a result of any action or claim that the Materials constitute Inappropriate Content.
- 09.3 ♦ Black and White may include the statement "Designed by Black and White Web Development" on the Site.

10 Data protection

- 10.1 ♦ Both parties shall comply with the Data Protection Legislation in connection with these Terms and the provision of the Services.

- 10.2** ♦ The parties acknowledge that, for the purposes of the Data Protection Legislation, the Customer is the Controller and Black and White is the Processor in respect of any Personal Data processed by it on behalf of the Customer in the course of providing the Services.
- 10.3** ♦ To the extent that Black and White processes Personal Data on behalf of the Customer, it shall:
- (a) process such Personal Data only on the documented instructions of the Customer, unless otherwise required to do so by applicable law;
 - (b) ensure that all personnel authorised to process the Personal Data are subject to appropriate obligations of confidentiality;
 - (c) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction or damage; and
 - (d) upon termination or expiry of these Terms, at the Customer's election, delete or return all Personal Data processed on the Customer's behalf, and delete all existing copies, except to the extent that applicable law requires retention.
- 10.4** ♦ The Customer warrants that it has all necessary rights and consents to transfer or otherwise make available Personal Data to Black and White for the purposes of the Services, and that Black and White's processing of such Personal Data in accordance with these Terms shall not cause either party to be in breach of the Data Protection Legislation.
- 10.5** ♦ Each party shall be independently responsible for its own compliance with the Data Protection Legislation in its capacity as a Controller of any Personal Data it processes for its own purposes in connection with these Terms.

11 Term, termination and survival

- 11.1** ♦ Subject to earlier termination under this clause 11, these Terms terminate automatically on publication of the Site and payment of all outstanding sums.
- 11.2** ♦ Without affecting any other right or remedy available to it, either party may terminate these Terms with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any provision of these Terms and (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - (c) the other party repeatedly breaches any of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to these Terms;
 - (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to

pay its debts as they fall due or admits inability to pay their debts; or

(e) any warranty given by the other party in clause 6 of these Terms is found to be untrue or misleading.

- 11.3 ♦ On termination of these Terms by Black and White under clause 11.2, all licences granted by Black and White under these Terms shall terminate immediately.
- 11.4 ♦ On expiry or termination of these Terms otherwise than on termination by Black and White under clause 11.2, Black and White shall promptly return all Materials to the Customer and shall provide to the Customer an electronic copy of the Site (including all content on the Site).
- 11.5 ♦ Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of these Terms shall remain in full force and effect.

12 Site Security

- 12.1 ♦ With effect from the date of publication of the Site, the Customer shall assume full responsibility for the security of the Site and Site Systems and shall take all reasonable steps to maintain and protect that security on an ongoing basis. For the avoidance of doubt, Black and White shall have no responsibility for the security of the Site and the Site Systems following publication, except to the extent that any security vulnerability is directly attributable to a defect in Black and White's work and is notified to Black and White in writing within 14 days of publication.
- 12.2 ♦ Upon publication of the Site, Black and White shall provide the Customer with all credentials required to access and manage the Site and Site Systems. The Customer shall change all such credentials immediately upon receipt. Black and White shall have no further access to the Site Systems following handover save where the Customer expressly requests Black and White's assistance, and Black and White accepts no liability in respect of any security incident arising from the Customer's failure to change the initial credentials promptly.

13 Change control

- 13.1 ♦ Black and White and the Customer shall discuss any change to the Proposal (Change) proposed by the other and such discussion shall result in either:
 - (a) a written request for a Change by the Customer; or
 - (b) a written recommendation for a Change by Black and White,
 - (c) or, if neither the Customer nor Black and White wishes to submit a request or recommendation, the proposal for the Change will not proceed.

- 13.2 ♦ All written requests or recommendations for Change shall be documented in a Change Control Note (CCN), which shall include the full details of the Change, the reason for the Change, the impact on timelines and any additional Charges.
- 13.3 ♦ No Changes will be actioned until the relevant CCN has been reviewed and approved by both parties.
- 13.4 ♦ Any additional Charges due in respect of any approved CCN shall be invoiced and paid in accordance with these Terms.

14 Force majeure

- 14.1 ♦ Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure result from events, circumstances or causes beyond its reasonable control.

15 Confidentiality

- 15.1 ♦ Each party shall keep the other's confidential information strictly confidential during the term of these Terms and for two years following their termination or expiry, and shall not use it for any purpose other than to exercise its rights or perform its obligations under these Terms.
- 15.2 ♦ Each party may disclose the other party's confidential information:
 - (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know it for the purposes of these Terms, provided that the disclosing party ensures such persons comply with this clause 15; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
 - (c) No party may use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms.

16 Notices

- 16.1 ♦ Any notice given to a party under or in connection with this contract shall be in writing and shall be sent by email to contact details set out in the Proposal.
- 16.2 ♦ This clause does not apply to the service of any proceedings or other documents in any legal

action or, where applicable, any arbitration or other method of dispute resolution.

17 Assignment and other dealings

- 17.1** ♦ Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under these Terms.

18 Third party rights

- 18.1** ♦ These Terms do not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of these Terms.

19 Governing law

- 19.1** ♦ These Terms and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them shall be governed by the law of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.