



Terms & Conditions

Professional Services

TERMS AND CONDITIONS FOR THE SUPPLY OF ONGOING PROFESSIONAL SERVICES BY:

T40 DIGITAL LIMITED

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions the following definitions apply unless otherwise stated:

'Business Day' means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

'Contract' means the contract between the Company and the Client for the supply of Services governed by these Terms and the Order.

'Client' means the individual or business entity who purchases Services from the Company and whose details are set out in the Order.

'Force Majeure Event' means an event beyond the reasonable control of either party, including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

'Group Company' means a company which is a subsidiary or holding company of the Company, as defined in section 1159 of the Companies Act 2006.

'Company' means T40 Digital Limited (otherwise known as T40) registered in England with company number 12605908, whose registered office is at Unit 11, Poplars Farm, Forshaw Heath Road, Solihull, Warwickshire, United Kingdom, B94 5JX

'Intellectual Property Rights' means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

'Order' means the order placed by the Client through counter-signing the Company's Quotation form.

'Order Form' means a Quotation form counter-signed by the Client which together with these terms and conditions shall form a binding contract.

'Quotation' means the written quotation prepared by the Company which contains its proposals for providing Services to the Clients.

'Services' means the services the Company will provide to the Client as specified in the Order.

'Specification' means the description or specification of the Services in the Order.

'Fee(s)' means the charges for the Services as set out in the Quotation;

'Standard Rates' means the hourly chargeable rate (£55.00 per hour unless otherwise specified in the Quotation);

'Start Date' means the date agreed by both Parties for the provision of the Services to commence.

'Minimum Term' means the period defined starting on the Effective Date;

'Terms' means these terms and conditions as updated from time to time by the Company.

'VAT' means value added tax chargeable under English law for the time being and any similar additional tax.

1.2. Where these Terms use words in their singular form, they shall also be read to include the plural form of the word and vice versa. Where these Conditions use words which denote a particular gender, they shall be also read to include all genders and vice versa.

1.3. The headings in this document are inserted for convenience only and shall not affect the construction or interpretation of these Terms.

1.4. A reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. TERMS AND CONDITIONS

2.1. We will provide a Quotation for all ongoing Services. The acceptance of our Quotation, electronically or otherwise, or the placement of an order, creates a legally binding Contract between the Company and the Client and includes the acceptance of these Terms and Conditions, which shall be incorporated in the Contract and apply between us.

2.2. These Terms shall apply to all agreements concluded between the Company and the Client to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.3. These Terms and the Order may only be varied by express written agreement between the Company and the Client.

3. THE CONTRACT

3.1. The Order constitutes an offer by the Client to purchase the Services in accordance with these Terms. The Client shall ensure that the terms of the Order and any relevant Specification are complete and accurate.

3.2. The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, or when the Company has started to provide the Services having received the Order, whichever happens first, at which point the Contract shall come into existence.

3.3. The Contract constitutes the entire agreement between the Company to provide the Services to the Client and for the Client to purchase those Services, in accordance with these Terms.

3.4. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or any other contract between the Company and the Client for the supply of Services.

3.5. A Quotation for the supply of Services given by the Company shall not constitute an offer. A Quotation shall only be valid for a period of 30 Business Days from its date of issue.

4. COMPANY OBLIGATIONS AND WARRANTIES

4.1. The Company will provide Services during our normal business hours of 9am - 5.00pm, Monday to Friday excluding public holidays in England, unless otherwise stated in the Order. Any works required outside of our normal business hours may be subject to additional costs at our discretion.

4.2. The Company warrants that it will provide the Services as stipulated in the Order using reasonable care and skill to conform in all material respects with the Specification.

4.3. The Company shall use all reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the provision of the Services. The Company shall not be liable for any delay in delivery of the Services caused by a Force Majeure event or the Client's failure to provide the Company with adequate delivery instructions or any other instructions relevant to the supply of the Services.

4.4. The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law.

4.5. The Company shall be entitled to use a Group Company or other subcontractors for the provision of the Services provided always that the Company shall remain liable to the Client for the performance of the Services as if it had carried them out itself.

4.6. The Company will provide professional advice and recommendations in relation to the Services but The Company cannot accept responsibility for any actions taken as a result of such advice or recommendations, nor guarantee the success or outcomes of any marketing campaign or any of the other Services provided. Further, we shall not be liable for any consequences should any professional advice given by us or on our behalf not be taken.

5. SUPPLY OF SERVICES

5.1. The Client shall be obliged to provide the Company with such reasonable information and assistance requested to enable the Company to perform the Services;

- 5.2. The Client shall be obliged to provide suitable and sufficient material and images to enable the Company to perform the Services;
- 5.3. The Client shall be obliged to inform the Company immediately of changes of domain names, websites, technical setup and any other material information regarding the technical infrastructure which may affect the Services delivered by the Company.
- 5.4. Obtain and maintain all necessary licenses, permissions and consents in connection with the Services;
- 5.5. In the event that the Client fails to undertake those acts or provide those materials required under this clause 5 within any agreed deadline (and at least within 15 Business Days of the date requested by the Company) the Company shall be entitled to invoice for the Services that it has supplied and the remaining Services specified in the Order whether or not the Company has been able to deliver them.
- 5.6. The Client shall indemnify and keep the Company indemnified fully against all liabilities, costs and expenses whatsoever and howsoever incurred by the Company in respect of any third parties as a result of the provision of the Services in accordance with the Order, Specification, or the content of the Client's advertising or web pages which result in claims or proceedings against the Company for infringement of any Intellectual Property Rights or other proprietary rights of third parties, or for breach of confidentiality or contract or for defamation.
- 5.7. Permit the Company to reference the Client's brand(s) in any promotional material and press releases that the Company may produce from time to time and the Client agrees to provide a written testimonial and reference for the Company's own promotional activities and to support any future bids the Company may undertake.

6. PRICES

- 6.1. Unless otherwise expressly stated, all prices shall be in Pounds Sterling and shall be exclusive of VAT and other duties. In the event that duties are introduced or changed after the conclusion of an Order, the Company shall be entitled to adjust the agreed prices accordingly.
- 6.2. The Client acknowledges that certain Services may involve the licensing of third party Intellectual Property Rights and that the Client may be required to enter into a licence directly with such third party. Unless otherwise expressly stated, all prices shall be exclusive of costs for the acquisition of Intellectual Property Rights for materials to be included in marketing materials, including if relevant (but without limitation) pictures and licences from third party owners and licensors.

7. PAYMENT

- 7.1. All Services provided under this Contract will be invoiced by us on a monthly basis, unless otherwise stated, throughout the duration of the Contract
- 7.2. If the Company provide any additional services not included within the Services or provide the Services outside of our normal business hours at the request of the Client, then the Company shall be entitled to charge for the same at our then current hourly rate. The Client will be advised of all additional charges in advance.
- 7.3. The Client shall pay each invoice submitted by the Company within 30 Business Days of the date of the invoice and in cleared funds in accordance with clause 7.4 below.

The invoice number shall be stated on all payments and payment by BACS, CHAPS, Cheque and Bank Transfer are accepted.

- 7.4. The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. the Company may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Company to the Client.
- 7.5. The Client shall reimburse the Company for any and all actual, reasonable travel expenses, any incidental expenses for materials used and for third party goods and services supplied in connection with the provision of the Services.
- 7.6. In the event of overdue payment, interest shall accrue on the invoice amount at the statutory rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 or at the rate of 2 per cent over the base rate of Barclays Bank Plc (whichever should be the higher). At the Company's discretion, a fee of £10 (to cover administrative expenses and not as a penalty) shall be charged per reminder for overdue payment submitted to the Client. the Company shall be entitled to submit such reminders on a weekly basis once the fees have become overdue. the Company expressly reserves all rights at all times to bring any legal action it considers appropriate to recover any unpaid sums.
- 7.7. Late payment shall be considered as constituting a material breach of the Contract entitling the Company (at its discretion) to cancel the Contract or to affirm the Contract and assert the usual remedies for breach.
- 7.8. Time for payment as set out in clause 7.3 shall be of the essence. If the Client fails to make payment in full on the due date or fails to comply with the Client's obligations as listed in clause 5, then without prejudice to any other right or remedy available to us, we shall be entitled to:
- a) appropriate any payment made by the Client to any outstanding sum;
 - b) charge interest on the amount outstanding from the due date to the date of receipt by us (whether before or after judgment), at the annual rate of 4% above the then current Bank of England base lending rate, accruing daily and compounded quarterly;
 - c) suspend all further provision of Services until the Client remedies the default;
 - d) not be held liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from our failure or delay in performing any of our obligations as a result; and
 - e) be entitled to claim for any costs or losses sustained or incurred by us arising directly or indirectly from the Client's default.

8. Variation

- 8.1. If the Client wishes to vary any other part of the Contract, the request for variation shall be sent in writing and must specify in detail the specific variation request. The Company shall respond to the Client as to whether we are prepared to agree to any change(s) and, if so, details of the cost of the change(s) and any effect on any other aspect of the

Contract, including any change in timescales. The Client may accept such proposal within such time as the Company may specify or, if none is specified, within 14 days, failing which the Company proposal(s) shall be deemed rejected. Pending acceptance or rejection, the Company will continue to perform the obligations under the Contract without reference to the request.

8.2. If, due to circumstances beyond the Company control, we are required to make any change in the arrangements relating to the provision of the Services, the Client shall be notified immediately. The Company shall endeavour to keep such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

8.3. Any agreed variation or amendment will be carried out in accordance with these Terms and Conditions and any price increase necessitated as a result of an agreed variation or amendment shall be payable in accordance with the terms for payment herein.

9. LIABILITY

9.1. Except as expressly stated in this Clause 9, the Company shall have no liability to the Client for any loss or damage whatsoever arising from or in connection with the provision of the Services or for any claim made against the Client by any third party.

9.2. Without prejudice to the generality of Clause 9.1 above, the Company shall have no liability for any losses or damages which may be suffered by the Client whether the same are suffered directly or indirectly or are immediate or consequential which fall into the following categories:

- a) Any indirect or consequential loss arising under or in relation to the Contract even though the Company was aware of the circumstances in which such loss could arise;
- b) Loss of profits; loss of anticipated savings; loss of business opportunity or goodwill;
- c) Loss of data; and
- d) Fraudulent clicks on any of the Client's accounts managed by the Company.

9.3. To the extent such liability is not excluded by sub-clauses 9.1, 9.2 and clause 10 below, the Company's total liability (whether in contract, tort (including negligence or otherwise)) under or in connection with the Contract or based on any claim for indemnity or contribution (including for damage to tangible property) or otherwise will not in any event exceed the total sum invoiced for the Services.

10. OTHER LIMITATIONS OF LIABILITY

10.1. The Company shall not be liable for downtimes, interference in the form of hacking, virus, disruptions, interruptions, faulty third-party software, search engines or websites on which a service is dependent or other deliveries from a third party. The Company shall use its reasonable efforts to assist in remedial efforts if so requested by the Client. Any work connected with remedial efforts as described above shall be charged to the Client separately in accordance with these Terms or (at the Company's discretion) the Company's price list applicable from time to time.

- 10.2. The Company shall not be liable for any changes made without notice by the Client or a third party employed by the Client to domain names, websites, links, technical setup etc. and affecting the Services delivered by the Company. Preceding or subsequent work connected with any adjustments required as a result of such changes shall be charged to the Client in accordance with these Terms or on the basis of the Company's price list applicable from time to time at the Company's discretion.
- 10.3. If the Client does not implement some or all of the Company's recommendations, the Company shall not bear any liability for any lack of success experienced by the Client relating to the Services.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. It is the responsibility of the Client to ensure that they have the right to use any Intellectual Property Rights when they provide any text, image or representation ("**Materials**") to the Company for incorporation into the Services and the Client hereby grants or agrees to procure the grant of (as applicable) an irrevocable licence to the Company to use such Materials for the purposes of providing the Services for the duration of the Contract.
- 11.2. The Client shall be responsible for ensuring that the contents of Materials which the Client has contributed or approved are not in contravention of legislation, decency, marketing rules or any other third-party rights. The Company shall be entitled to reject and delete such material without incurring any liability. In addition, the Company shall be entitled to cancel the Order.
- 11.3. The Client shall indemnify the Company against all damages, losses and expenses suffered or incurred by the Company as a result of the Materials which the Client has contributed or approved being in contravention of legislation, decency, marketing rules or any action that any such Materials infringe any Intellectual Property Rights of a third party.
- 11.4. The parties shall be obliged to notify the other party without undue delay of any claims raised against a party as described above.
- 11.5. Unless expressly stated otherwise in these Terms or in an Order, the Intellectual Property Rights created, developed, subsisting or used in connection with the Services and whether in existence at the date hereof or created in the future shall vest in and be the property of the Company or the relevant third party from whom the Company has acquired a right of use with a view to executing the Order. The Client agrees to execute and deliver such documents and perform such acts as may be necessary from time to time to ensure such Intellectual Property Rights vest in the Company.
- 11.6. The Intellectual Property Rights as mentioned in Clause 11.2 shall not be used, assigned, distributed, copied, forwarded to online or offline activities by the Client without a separate, express written agreement.
- 11.7. If the Company makes software, scripts, ASP services etc. available to the Client as part of the execution of an Order, the Client shall only acquire a non-exclusive personal non transferable license to use such material until the Services under this agreement cease.
- 11.8. The Client hereby irrevocably licenses the Company to use and display the Client's name, figure, logo etc. as a reference on the Company's website, other marketing materials or types of media whilst they are a Client of the Company and for 18 months

after the Contract terminates. The Client agrees to send the Company its most recent logo or figure as and when it is amended from time to time.

12. CONFIDENTIALITY AND PERSONAL DATA

- 12.1. A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of the Contract.
- 12.2. Each party agrees to comply with its respective obligations under the Data Protection Act 2018.
- 12.3. The Client shall be obliged to indemnify the Company for any loss, including costs incidental to legal proceedings, suffered by the Company as a result of the processing of personal data which the Client has contributed being in contravention of the Data Protection Act 2018 or marketing law. The parties shall be obliged to notify the other party without undue delay of any claims raised against a party as described in the present clause.
- 12.4. This clause 12 shall survive termination of the Contract, however caused.

13. TERM, TERMINATION AND ASSIGNMENT

- 13.1. This agreement shall continue for the Minimum Term from the Effective Date. It shall continue for the Minimum Term and thereafter shall automatically renew for further durations the same length as the Minimum Term (the "Renewal Term") on the anniversary of the Effective Date until one party gives the other party written notice to terminate in accordance with clause
- 13.2. Either party may terminate the Agreement by giving at least 30 days written notice to the other party. By providing written notice to the other party during the Minimum Term or Renewal Term either party may elect to terminate this Agreement upon (but not before) expiry of the Minimum Term or Renewal Term. For the avoidance of doubt, parties are entitled to give 30 days written notice to terminate the agreement at any time within the Minimum Term or any subsequent Renewal Term, however termination will not occur until the end of the relevant Minimum Term or Renewal Term.
- 13.3. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
- a) commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - b) becomes or is insolvent or is unable to pay its debts (within the meaning of the Insolvency Act 1986) or (except for the purposes of a genuine amalgamation or reconstruction) a petition is presented or meeting convened or resolution

passed for winding up the defaulting party or the defaulting party enters into liquidation whether compulsorily or voluntarily or compounds with its creditors generally or has a receiver, administrator, or administrative receiver appointed over all or any part of its assets or the defaulting party ceases to carry on all or a substantial part of its business.

13.4. The Company shall, in addition to all other rights and remedies under these Terms be entitled to terminate this Contract without notice in the event that any of its charges for the Services are not paid in accordance with these Terms.

13.5. Upon termination, for whatever reason, the parties shall be obliged to return all materials received from the other pursuant to the Contract without undue delay. If relevant, the Client shall be obliged to remove codes, etc, from websites without undue delay. If the Client fails to do so, the Company shall be entitled to invoice the Client in line with its then current terms and conditions for subsequent Services without such invoicing amounting to a waiver of the Company's right to terminate the Contract.

13.6. The Client shall not be permitted to assign or transfer all or any part of its rights or obligations under the Contract and these Terms without the prior written consent of the Company.

13.7. The Company shall be entitled to assign or subcontract any of its rights or obligations under the Contract and these Terms and the Client acknowledges that certain elements of the Services will be provided by third parties.

14. FORCE MAJEURE

14.1. Neither party shall be held liable for a Force Majeure Event.

14.2. If a party believes that a Force Majeure Event has occurred, such party shall immediately inform the other party of the start and end of the Force Majeure Event.

14.3. Notwithstanding the other provisions of the present Terms, each party shall be entitled to terminate the Contract without liability to the other by written notice to the other party in the event that the performance of the Contract is impeded for more than 6 months due to a Force Majeure Event.

15. NO EMPLOYEMENT

15.1. Nothing in this Contract shall render or be deemed to render the Client an employee or agent of the Company or the Client an employee or agent of ours.

15.2. Nothing in this Contract shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Neither Party shall have the authority to act in the name of or on behalf of, or otherwise to bind, the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

16. MISCELLANEOUS

16.1. The Company reserves the right to modify or discontinue, temporarily or permanently, the Services with or without notice to the Client and the Company shall

not be liable to the Client or any third party for any modification to or discontinuance of these Services save for the return of any prepaid sums in connection with the provision of the Services which are subsequently not provided.

- 16.2. The Company shall be free to provide its Services to third parties whether during or following the provision of the Services to the Client.
- 16.3. During the term of the Contract and for a period of 12 months thereafter, the Client agrees not to employ or engage or offer to employ or engage anyone designated by the Company to work on the Services.
- 16.4. The failure of either party to enforce or to exercise at any time or for any period of time any right pursuant to these Terms does not constitute, and shall not be construed as, a waiver of such terms or rights and shall in no way affect that party's right later to enforce or to exercise it.
- 16.5. If any term of these Terms is found illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining Terms, be deemed omitted from these Terms and shall in no way affect the legality, validity or enforceability of the remaining Terms which shall continue in full force and effect and be binding on the parties to the Contract.
- 16.6. Any valid alteration to or variation of these Terms must be in writing signed on behalf of each of the parties by duly authorised officers.
- 16.7. A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8. All notices must be in writing to T40 Digital Limited, Unit 11, Poplars Farm, Forshaw Heath Road, Solihull, Warwickshire, United Kingdom, B94 5JX, or such address as is advised by the Company.

17. ENTIRE AGREEMENT

The parties acknowledge and agree that the Contract supersedes any prior agreement, understanding or arrangement between the parties, whether made orally or in writing and constitute the entire agreement between the Company and the Client relating to these Services. Therefore, except as expressly provided, all other conditions and warranties (implied, statutory or otherwise) are hereby excluded to the fullest extent permitted by law.

18. LAW AND JURISDICTION

- 18.1. The Company and the Client shall be obliged to attempt to settle any disputes arising between them including disputes relating to the existence or validity of the Contract through negotiation provided always that either party shall be entitled at all times to exercise any of its other remedies including through taking legal action.
- 18.2. The Contract shall be governed by and construed in accordance with English law and the parties hereby agree to submit to the non-exclusive jurisdiction of the English courts.