

## **Westhill Group Ltd Standard Terms And Conditions Of Business**

### **1 Definitions**

- 1.1 In these conditions "The Company" means Westhill Group Ltd whose principal place of business is at 38 Charlotte Street, London W1T 2NN, and "The Client" means the person, firm or company to whom this document is addressed.
- 1.2 Subject to clause 1.3 below, "The Goods" means the subject of this order.
- 1.3 Where the contract is for the provision of services the words "The Goods" shall be read, where the context permits, as meaning the service which the Client has contracted the Company to provide.

### **2 Formation of the Contract**

- 2.1 These conditions shall form the basis of the contract between the Company and the Client. Notwithstanding anything to the contrary in the Client's standard conditions of purchase, these conditions shall apply except so far as expressly agreed in writing by a person authorised to sign on behalf of the company.
- 2.2 Unless otherwise expressly stated in writing, all quotations and estimates by the Company are invitations to treat.
- 2.3 The construction, validity and performance of these conditions and this order shall be governed by English Law, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of England.
- 2.4 These conditions supersede all previous terms and conditions of sale issued by the Company.

### **3 Copyright and Content**

- 3.1 The Client warrants and represents to the Company that the Company's use of all text, graphics, logos, photographs, images, moving images, sound, illustrations and other materials featured, displayed or used or to be featured, displayed or used that is provided by the Client to the Company in accordance with the terms of the contract will not infringe copyright and other intellectual property rights of any third party.
- 3.2 All domain names are registered in the Client's name and not that of the Company.
- 3.3 The copyright and other intellectual property rights in any material prepared by the Company for the Client shall belong to the Client and the Company agrees to never knowingly infringe copyright or intellectual rights. The Client understands and accepts that certain material provided by the Company for the running of the website and other material in which the Company does not have copyright cannot be assigned to the Client but in regard to those matters the Client will be licensed to use the material. Nothing in this provision shall preclude the Company from utilising the results of the provision of services and designs to the Client for promotional and advertising purposes of the Company. The Company will not knowingly infringe third party rights.
- 3.4 The Company reserves the right to publicise the work we have done and to request examples of the final products

### **4 Design and Production**

- 4.1 The Company will produce and publish temporarily on the Company's development site a design proof for the Client's approval.
- 4.2 The Company will complete the design and build of the Client's Website after receiving written confirmation that the design is satisfactory.

### **5 Cancellation**

No cancellation or variation of the whole or any part of the order by the Client is permitted except where expressly agreed in writing by a person authorised to sign on behalf of the Company.

### **6 Fees for Service**

6.1 It is agreed that the fee for the service shall be the cost quotation provided, unless work undertaken exceeds work outlined. If work undertaken exceeds the items specified, the Client agrees to pay appropriate fees for the excess work.

6.2 Excess work is defined as any work involving additions and/or changes to the quotation or changes to all pieces of finished work after sign-off by an authorised representative.

6.3 Any agreed delivery dates or other deadlines are dependent on the Client meeting all workflow agreements. If there is any deviation from these dates, the Company cannot guarantee the final delivery date. In respect of delivery dates or other deadlines, time shall not be of the essence.

6.4 VAT will be added to all invoices at the rate applying at the appropriate tax point.

## **7 Payment**

7.1 Unless otherwise agreed in writing the Company will invoice for work done on a monthly basis commencing one month after commencement of work. Unless the sale is for cash, or other credit terms have been expressly agreed in writing, all accounts are due for payment on or before 30 days following date of dispatch of invoice.

7.2 The Company reserves the right to charge interest at 4% per annum above the base rate from time to time in force at Lloyds TSB Bank plc on all overdue accounts.

7.3 Quotes are valid for 30 days from the date of the Quote. All prices quoted may be subject to change without notice after this period.

7.4 The Client shall not be entitled to set off against any amount payable any amount due by reason of any dispute or claim by the Client, or any amount due by the Company to the Client under any other agreement.

7.5 The Client shall reimburse to the Company any costs incurred by the Company in re-presenting any cheque or other instrument delivered by the Client to the Company.

7.6 The Company reserves the right at any time at its discretion to demand security for payments before continuing with or delivering any of the Goods notwithstanding any subsisting agreement to provide credit to the Client.

7.7 Without prejudice to any other rights of the Company, if the Client shall fail to make punctual payments of any sum under any contract between the Company and the Client, the Company may, at its option, either withhold delivery of the Goods until the total indebtedness of the Client to the Company has been discharged, or cancel the contract.

## **8 Delivery**

8.1 Delivery will be deemed to have been effected when the Goods leave the premises of the Company or as the case may be, the premises of the Factory/Suppliers to the Company in circumstances where the Goods are delivered direct from such suppliers.

8.2 The Client shall provide at its own expense the labour necessary for unloading the Goods, such labour to be available during normal working hours on the day notified by the Company for delivery.

8.3 The Client shall sign the Company's delivery note as acknowledgement of delivery.

8.4 If the Client wishes to claim that there is any shortage on the delivery of any Goods or that any of the Goods are delivered damaged, the Client shall give notice in writing to the Company within seven days after the date of delivery, failing which the Goods shall be deemed to have been undamaged and in accordance with the delivery documents.

(a) If short delivery does take place, the Client shall not reject the Goods but shall accept the Goods delivered as a part performance for the order.

(b) If short delivery or damaged Goods are complained of, the Company shall be under no liability in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company before and use thereof is made by the Client.

8.5 If the Client fails to take delivery on the agreed date, when the goods are ready for dispatch, the Company shall be entitled to store and insure the Goods and charge the Client the reasonable cost of so doing.

## **9 Title and Risk**

- 9.1 Risk in the Goods shall pass to the Client when the Goods are delivered to the Client.
- 9.2 The title in the Goods shall remain with the Company until the Client has paid all sums owed by the Client to the Company whether in respect of this order or otherwise.
- 9.3 The Goods shall be stored on the Client's premises separately from any other goods and the Client shall not interfere with any identification marks or serial numbers on the Goods.
- 9.4 The Company may at any time recover and resell Goods in which title shall not have passed to the Client.
- 9.5 The Client is licensed by the Company to use or agree to sell the goods delivered to the Client subject to the express condition that the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for the Company and not mixed with other monies paid into an overdrawn bank account and shall at all times be unidentifiable as the Company's monies.
- 9.6 Until title to the Goods passes, without prejudice to any other rights of the Company, the Company may at any time revoke the power of sale and use contained in clause 9.5 above by notice to the Client if the Client is in default for longer than 14 days in the payment of any sum whatsoever due to the Company whether in respect of the Goods or otherwise or if the Company has bona fide doubts as to the solvency of the Client, whereupon the Client shall deliver up such Goods to the Company.
- 9.7 The Company by its servants and agents shall be entitled to access to the Client's premises or those to which the buyer has a right of access where the Goods or some of them are stored for the purpose of repossession at any time.
- 9.8 Risk of Goods shall revert to the Company following repossession but not otherwise.

## **10 Specifications**

- 10.1 Where samples are submitted, these are drawn from bulk and are representative of the whole and no guarantee can be given that every item will be the same in all material respects as the sample.
- 10.2 The Goods are supplied on the basis that they conform to the written descriptions contained in the estimate or quotation.
- 10.3 If the Goods are manufactured to the design or specification of the Client or the Client's agent, the Goods carry no undertaking or warranty of any kind save that they will comply with the design or specification in all material respects.
- 10.4 The Company accepts no responsibility or liability for unbranded goods supplied to the Client for branding or personalisation once the Client has accepted delivery of the unbranded Goods.

## **11 Indemnity and Other Matters**

- 11.1 The Client shall indemnify and save harmless the Company against any claims, liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by the Company whether direct, indirect or consequential arising out of any dispute or contractual tortious or other claims or proceedings brought by a third party that may arise out of the content or nature of the material stored upon any computer or server or which may be prohibited or protected by laws of any country or state relating to copyright confidentiality or intellectual property.
- 11.2 The Client will keep any password and personal identification code confidential and immediately notify the Company if any unauthorised third party becomes aware of them.
- 11.3 Domain names are obtained and held by the Company on the Client's behalf using third parties. The Client takes all risks in connection with the solvency and performance of such third parties. The Company acts as the Client's agent in these matters, and the Client accepts that the third party has sole liability to provide such services.
- 11.4 No liability will be accepted for compatibility issues with code or any errors, omissions or failings of software code produced.

## **12 Website Hosting and Email**

- 12.1 For the purposes of this Part, "Server" means the computer server equipment operated by the Company or others in connection with the provision of the Service.

12.2 The Company makes no representation and gives no warranty as to the accuracy or quality of information received by any person via the Server.

12.3 The Client shall effect and maintain adequate insurance cover in respect of any loss or damage to data stored on the Server.

12.4 The Company shall use all reasonable endeavours to ensure that access to the clients' website is available at an uptime level of 95%. For the avoidance of doubt the uptime availability level does not include downtime attributable to hardware failures. However, the Company will not guarantee or be liable for any breaks in the continuity of the electricity supply or of the telecoms link to the Server that is provided by a third party.

### **13 Password and Account Number**

13.1 On acceptance and confirmation by the Company of the Client's application for the Service, the Company will allocate an account number to the Client, a password and various other personal identifiers. It is the Client's responsibility to keep them safe and not disclose them to anyone else. The Client is responsible for all use of the Service accessed via these passwords or personal identifiers, including, without limitation, all charges incurred and any breaches of this agreement, even where the Service is not actually used by the Client, but by some other person or organisation using the passwords or personal identifiers.

13.2 The Company will accept the Client's password or security phrase as authority to make any changes to the Service or the Client's account.

### **14 Support Services**

The Company will use all reasonable endeavours to restore the Service with minimum delay.

### **15 Suspension/Termination**

15.1 The Company reserves the right at any time to suspend the Service or terminate the Contract, at the Company's discretion without notice to the Client and without giving the Client any refund in the event that:

15.1.1 The Company, acting reasonably, considers that the Client has made inappropriate use of the Service; or

15.1.2 The Company is precluded from providing the Service by law or by the decision of any competent judicial, governmental or regulatory body; or

15.1.3 The Client provides the Company with any false, inaccurate or misleading information for the purpose of using the Service; or

15.1.4 The Client fails to pay any sum due to the Company when it falls due, or the Client breaches any other provision of the Agreement and, if the breach is remediable, fails to remedy the breach within 30 days of written notice from the Company specifying the nature of the breach, and the steps required to remedy it; or

15.1.5 The Client commits an irremediable breach of the contract. Without limitation, particular examples of breaches which are for the purposes of the Agreement incapable of remedy include jeopardising or compromising the security or integrity of the Company's network including, for example (but without limitation), the posting or transmission of defamatory content through or in connection with the Service; or

15.1.6 (In accordance with the law of any jurisdiction in the world) the Client becomes bankrupt or apparently insolvent, is sequestrated, wound up, makes a proposal for a voluntary arrangement under the Insolvency Act 1986, ceases or threatens to cease to carry on its business, or otherwise is unable to meet its debts as they fall due.

15.2 The Company may temporarily suspend the Service for the purpose of repair, maintenance or improvement of any of the Company's facilities which are necessary to provide the Service, or vary the technical specification of the Service for operational reasons, without incurring any liability to the Client or any other person, subject to the Company giving the Client or any other person as much online, written or oral advice as is reasonably practicable in the circumstances, and restoring the Service as soon as reasonably practicable after such temporary suspension.

15.3 If any Network Operator shall discontinue the provision of telecommunications services to the Company or shall alter by modification, expansion, improvement, maintenance or repair of the telecommunications services or any part thereof provided to the Company or shall disconnect the Client's apparatus from the PSTN, PDN or Internet the Company shall be entitled to discontinue, alter, modify, expand, improve, maintain, repair, suspend, disconnect or otherwise change the Services as necessary.

15.4 On termination of the contract or suspension of the Service in any of the circumstances described in clauses 15.1.1 to 15.1.6 inclusive, the Company shall be entitled, acting reasonably, to do all or any of the following:

15.4.1 Immediately to block any website of the Client's which the Company hosts and to remove all data located on it or on the Company's servers;

15.4.2 To delete all such data (but the Company may, at its discretion, hold such data for such period as the Company may decide to allow the Client to collect it at their expense, subject to payment in full of any amounts outstanding and payable to the Company by the Client);

15.4.3 To post such notice on the Client's website in respect of the non-availability of their website as the Company thinks fit.

## 16 Unacceptable Content

16.1 The Company does not control, modify or screen the content of any client sites, except where the Company suspects the site contains or consists of the following:

16.1.1 Sites which sell sex-related merchandise of any kind (videos, books, adult novelties, etc), or sites with links to them.

16.1.2 Sites which contain text, depictions, drawings, and/or images which are construed as "hate speech" or sites with any links to other hate speech pages/sites.

16.1.3 Hacker/cracker tools, or sites with links to them.

16.1.4 Spam tools, or scripts for sending anonymous bulk mail.

16.1.5 Listings of serial numbers or cracks for commercial software, or sites with links to them.

16.1.6 Pages with password lists for members-only sites (listings of passwords to allow entry into third party sites), or sites with links to them.

16.1.7 "Warez" sites (containing illegal copywritten commercial software or links to sites which distribute it), or sites with links to them.

16.1.8 Download archives (shareware, MP3s, picture galleries, etc).

Note: you may have files for download at your site. Your site may not, however, be placed on our servers if its sole purpose is to provide large amounts of software downloads.

16.1.9 domain names that contain offensive titles, even if the content is not in violation of the TOS.

Westhill Group Ltd SHALL BE THE SOLE ARBITER OF WHAT CONSTITUTES UNACCEPTABLE CONTENT.

VERY IMPORTANT: Any site hosted with the Company where the above types of content are found shall be summarily terminated without any compensation. In addition, the Company will forward contact information to the appropriate legal authorities and co-operate fully with them. The Company reserves the right to periodically re-evaluate these criteria and add to them as deemed necessary.

Anyone locating a site that contains any of the above material and is hosted by Westhill Communications Ltd is asked to inform us directly by email at: [solutions@westhill.co.uk](mailto:solutions@westhill.co.uk)

## 17 Liability

Notwithstanding any other provisions in these terms and conditions, the Company's liability to the Client for death or injury resulting from the Company's negligence or that of its employees, agents or sub-contractors shall not be limited. The Company's entire liability to the Client in respect of any

breach of the Company's contractual obligations, any breach of warranty, and representation, statement, tortious act or omission including negligence arising under or in connection with this contract shall be limited to £500,000. The Company shall not be liable to the Client for any indirect or consequential loss the Client may suffer, even if the loss is reasonably foreseeable or the Company has been advised of the possibility of the Client incurring it.

#### **18 Force Majeure**

The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside its control, including but not limited to lock-out, fire, accidents, defective materials, delays in receipt of raw materials or bought-in goods or components, terrorism or acts of war.

#### **19 Exclusion of Third Party Rights**

The Contracts Rights of Third Parties Act 1999 shall not apply and no person other than the parties to this contract shall have any rights under it, nor shall it be enforceable under that Act by any person other than the parties to it.