



DESIGNED.
DEVELOPED.
CREATED.

FEEL CREATED LTD

Terms of Business

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**DESIGN. WEB.
SEO. PROGRAMMING.
CONSULTATION.
BRANDING. PRINT.
WHITE LABEL.**

The Client's attention is particularly drawn to the provisions of clause 12

1. Interpretation

1.1 In these Conditions, the following definitions apply:

'Conditions': means these terms and conditions as amended from time to time in accordance with clause 15.8.

'Contract': means the contract between FC and the Client for the supply of the Services in accordance with these Conditions.

'Contract Price': means the amount to be charged by FC to the Client for the Services, as set out in the Proposal.

'Client': means the person who purchases the Services from FC.

'Deliverables': means the deliverables set out in the Proposal to be produced by FC for the Client.

'Design Services': means any Services relating to the design and construction of the Website by FC for the Client, as more particularly set out in the Proposal.

'FC': means Feel Created Limited, company registration number 07866403.

'Force Majeure Event': means an event beyond the reasonable control of FC including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of FC or any other party), 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.

'Hosting Services': means any Services relating to the hosting of the Website by FC for the Client, as more particularly described in the Proposal.

'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, 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.

'Maintenance Services': means any Services relating to the maintenance, support or updating of the Website by FC for the Client (which may include search engine optimisation services), as more particularly described in the Proposal.

'Printing Services': means any Services relating to the design and production of artwork intended to be printed onto any tangible media, including (unless the Client has notified FC otherwise) procuring the printing of such artwork to produce the final hard-copy products ('Prints').

'Proposal': means FC's written proposal of all works to be undertaken by FC (including any description or specification thereto), issued by FC to the Client.

'Services': means the services, including the Deliverables, to be supplied by FC to the Client, as set out in the Proposal, which may include Design Services, Maintenance Services, Hosting Services and/or Printing Services.

'Sign-off': has the meaning given in clause 5.2.

'Website': means the website(s) which the Client has engaged FC to design, maintain or host.

1.2 In these Conditions, the following rules apply:

1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

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

1.2.4 any phrase introduced by the terms including or include or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.2.5 a reference to writing or written includes faxes, emails and electronic instant messaging; and

1.2.6 if there is any inconsistency between a provision of these Conditions and a provision of the Proposal, the provisions of the Proposal shall prevail to the extent of the inconsistency only.

2. Formation of Contract

2.1 The Proposal constitutes an offer by FC to provide the Services to the Client in accordance with these Conditions. The Proposal is valid for three months from the date of issue. The Proposal shall be deemed to be accepted when FC has received the Client's written acceptance of the Proposal and any deposit which FC has told the Client it requires (in cleared funds), at which point and on which date the Contract shall come into existence.

2.2 The Contract, and any documents referred to in it, constitute the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of FC which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by FC, and any descriptions or illustrations contained in the FC's catalogues or brochures, are issued for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

- 2.3** These Conditions apply to the Contract 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.
- 2.4** Any quotation given by FC prior to issuing the Proposal shall not constitute an offer.

3. Supply of Services

- 3.1** FC shall supply the Services to the Client in accordance with the Proposal in all material respects.
- 3.2** FC shall use all reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence.
- 3.3** FC shall have the right to make any changes to the Services which are necessary to comply with any applicable law or regulatory guidance, or which do not materially affect the nature or quality of the Services. FC shall notify the Client of any such change.
- 3.4** FC warrants to the Client that the Services will be provided using reasonable care and skill.

4. Client's obligations

- 4.1** The Client shall:
- 4.1.1** ensure that the terms of the Proposal are complete and accurate;
- 4.1.2** promptly provide FC with such information and materials as FC may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 4.1.3** obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- 4.1.4** co-operate with, and follow any reasonable instructions of, FC.
- 4.2** If FC's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation ("Client Default"):
- 4.2.1** FC shall, without limiting its other rights, have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays FC's performance of any of its obligations;
- 4.2.2** FC shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Client Default; and
- 4.2.3** the Client shall reimburse FC on written demand for any costs or losses sustained or incurred by FC arising directly or indirectly from the Client Default, including in respect of any extra work incurred, which FC may charge the Client for, at its standard rates.

- 4.3** The Client shall be solely responsible for compliance with any laws and taxes applicable in any way to the Website, and shall indemnify FC against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by FC arising out of or in connection with this clause 4.3.

5. Sign-off

- 5.1** Where FC are to provide Design Services, Printing Services or Maintenance Services, FC may submit images, text, designs, layouts or other material which are indicative of the appearance of the Website or Prints (as appropriate) ('Proofs'), to the Client for approval (in any form, including electronic). If the Client is not satisfied with the Proofs, it should notify FC within seven days (or such other period as may be agreed between the Client and FC). FC will then, where reasonable, amend and resubmit the Proofs to the Client for approval, up to a maximum of three times (or such other maximum agreed between the Client and FC).
- 5.2** If the Client does not inform FC otherwise within a period of seven days (or such other period as may be agreed between the Client and FC) of receiving the Proofs (including any amended Proofs), the Client shall be deemed to have accepted the Proofs as being in accordance with the Proposal and its instructions ('Sign-off'), and the Company shall have no responsibility for any errors or omissions which are subsequently discovered.

6. Design and Maintenance Services

The provisions of this clause 6 shall only apply if FC is to provide Design Services and/or Maintenance Services under the Contract.

- 6.1** FC will use reasonable endeavours to ensure that the Website is compatible with the latest versions of Chrome, Safari, Firefox and Internet Explorer 9 (unless otherwise requested and agreed in writing).
- 6.2** FC will use reasonable endeavours to ensure that the Website meets the Web Content Accessibility Guidelines 1.0, found at: www.w3.org/TR/WCAG10/
- 6.3** FC may include a non-obtrusive link to FC's website labelled "Designed by Feel Created Ltd" within the footer of the Website.

7. Hosting

The provisions of this clause 7 shall only apply if FC is to provide Hosting Services under the Contract.

- 7.1** The Client acknowledges and agrees that FC hosts the Website on a virtual server ('Server'), which is in turn hosted by Heart Internet Ltd ('Heart'), a third party. The Client agrees to Heart's terms of use from time to time, which are deemed to be incorporated into these Conditions. The current terms can be found at: <https://www.heartinternet.uk/terms>.

- 7.2** The Client shall not misuse the Server to send “spam” to other FC customers using the Server, or the general public, and shall indemnify FC against all damages, losses and expenses arising as a result of any breach of this clause 7.2 by the Client.
- 7.3** The Client shall ensure that the Website does not infringe any applicable laws, regulations or third party rights (including ensuring that content is not 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’)).
- 7.4** The Client acknowledges that FC has no control over any content placed on the Website by the Client or visitors and does not purport to monitor the content of the Website. FC reserves the right to remove content from the Website where it reasonably suspects such content is Inappropriate Content. The Client shall notify FC if it becomes aware of any allegation that the Website contains Inappropriate Content.
- 7.5** The Client shall indemnify FC against all damages, losses and expenses arising as a result of any action or claim that the Website contains Inappropriate Content.
- 7.6** FC may include a non-obtrusive link to FC’s website labelled “Design & Development by Feel Created” within the footer of the Website.

8. Printing Services

The provisions of this clause 8 shall only apply if FC is to provide Printing Services under the Contract.

- 8.1** If the Client notifies FC that FC are not required to procure the production of the Prints, the Client shall be responsible for producing the Prints (including the costs thereof) and FC shall not have any liability for any defects in the Prints, including any distortion arising as a result of the transition from the electronic design to the tangible media.
- 8.2** FC may include a non-obtrusive link to FC’s website labelled “Designed by Feel Created Ltd” within the design for the Prints.
- 8.3** FC shall be entitled to keep a hard copy of all Prints of which it procures production. If FC is not to procure production of the Prints, the Client shall send FC a hard copy of the Prints as soon as possible.

9. Charges and payment

- 9.1** The price for the Services shall be the Contract Price, or if none is specified, the price shall be calculated by reference to FC’s hourly rates from time to time, exclusive of any disbursements payable in accordance with clause 9.4.
- 9.2** Any work:
- 9.2.1** requested by the Client to be undertaken by FC in addition to, or in substitution for, that set out in the Proposal, or in respect of any material which the Client has already given (or deemed to have given) its Sign-off; or
 - 9.2.2** not catered for in the Proposal but which is required to be undertaken by FC for it to deliver the Services, by virtue of any unforeseen circumstances or delays (including due to third party interference with the Website code), or incorrect information provided by the Client, shall be charged to the Client in accordance with FC’s hourly rates from time to time.
- 9.3** Where FC is to charge by reference to its hourly rates, these shall be calculated by reference to:
- 9.3.1** the time spent by FC in dealing with the work by reference to six minute (1/10th of an hour) blocks of time; and
 - 9.3.2** the relevant rate at which FC charges for work. The standard hourly rates (as set by FC from time to time) shall apply to all work carried out by employees of FC during normal business hours. Any work which the Client requires to be done outside of normal business hours may be charged at a premium rate, to be set by FC and notified to the Client.
- 9.4** In addition to the charges set out in clauses 9.1 to 9.3, FC shall be entitled to charge the Client for:
- 9.4.1** any expenses reasonably incurred by it or its employees in performing the Services, including travelling expenses, hotel costs, subsistence and any associated expenses; and
 - 9.4.2** the cost to FC of engaging any third parties which FC in its discretion chooses to use to provide any services or materials (including images, fonts, texts, videos or other media, or hosting services) for the performance of the Services by FC.
- 9.5** FC may invoice the Client:
- 9.5.1** in respect of Design Services or Printing Services, upon receiving Sign-off at each stage, and upon or following completion of the Services;
 - 9.5.2** in respect of Maintenance Services, or any other Services, from time to time in respect of work in progress and disbursements;
 - 9.5.3** in respect of Hosting Services, at such intervals as agreed between FC and the Client.

- 9.6** The Client shall pay FC's invoice(s) in full and in cleared funds to a bank account nominated in writing by FC within 30 days of the date of the invoice. Time for payment shall be of the essence.
- 9.7** All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by FC to the Client, the Client shall, on receipt of a valid VAT invoice from FC, pay to FC such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 9.8** Without limiting any other right or remedy of FC, if the Client fails to make any payment due to FC under the Contract by the due date for payment ("Due Date"), FC shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 9.9** 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 FC in order to justify withholding payment of any such amount in whole or in part. FC may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by FC to the Client.

10. Intellectual Property Rights

- 10.1** Subject to clauses 10.2 and 10.3, all Intellectual Property Rights created by FC in any works arising in connection with the performance of the Services by FC shall be the property of FC. Subject to FC receiving full payment of its invoices relating to the Contract, FC hereby grants to the Client a non-exclusive licence to use such Intellectual Property Rights for the purpose(s) made known to FC by the Client at the time the Contract was formed, and not, for the avoidance of doubt, for use on any future projects with other agencies.
- 10.2** All Intellectual Property Rights owned by FC in the content of the Prints and the Website (for the avoidance of doubt, this does not include any Intellectual Property Rights subsisting in the code to the Website, or those referred to in clause 10.3) are, subject to FC receiving full payment of its invoices relating to the Contract, hereby assigned to the Client. The Client hereby grants to FC a non-exclusive, perpetual, royalty-free licence to use such Intellectual Property Rights for FC's publicity and marketing purposes.

- 10.3** The Client acknowledges that FC may use Intellectual Property Rights which it has licensed from third parties (including rights subsisting in photographs or software) in the design of the Website and/or Prints. The Client shall not have any exclusivity in respect of such rights and FC may use them for other websites or printed artwork which it produces for other customers. The Client's use of any such Intellectual Property Rights is conditional on FC obtaining a written licence from the relevant licensor on such terms as will entitle FC to license such rights to the Client.
- 10.4** Unless the Client notifies FC otherwise, the Client consents to FC naming the Client as one of its clients, and/or displaying the Client's logo, on FC's website and other publicity materials,
- 10.5** The Client warrants that it has the right to use the material supplied to FC for inclusion in the Website and/or Prints (as appropriate) and indemnifies FC against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by FC as a result of such material infringing any third party's rights.

11. Confidentiality

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 11 shall survive termination of the Contract.

12. Limitation of liability:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these Conditions shall limit or exclude FC's liability for:

- 12.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 12.1.2** fraud or fraudulent misrepresentation; or
- 12.1.3** breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

12.2 Subject to clause 12.1:

12.2.1 Without prejudice to the generality of clause 12.2.2, FC shall not be liable for:

12.2.1.1 any reduction in the number of visitors to the Website during or after performance of the Services;

12.2.1.2 any failure of online forms, emails or other online methods of trade on the Website;

12.2.1.3 any security breaches relating to the Website;

12.2.1.4 any failure of the Website to comply with Payment Card Industry Compliance Guide; or

12.2.1.5 any loss of trade due to down time of the server upon which the Website is hosted.

12.2.2 FC shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

12.2.3 FC's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the total price paid by the Client to FC pursuant to the Contract.

12.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of the Contract.

13. Termination

13.1 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:

13.1.1 convenes a meeting of creditors (whether formal or informal), enters into liquidation (whether voluntary or compulsory), except a members' voluntary liquidation for the purpose only of reconstruction or amalgamation, enters a scheme of arrangement, has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with any court for the appointment of an administrator of the other party or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proposal is prepared or meeting convened to approve a solvent arrangement or proceedings are commenced relating to the insolvency or possible insolvency of the other party;

13.1.2 suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or ceases to, or threatens to cease to, trade; or

13.1.3 (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

13.2 Without limiting its other rights or remedies:

13.2.1 FC shall have the right to suspend provision of the Services under the Contract or any other contract between the Client and FC if the Client becomes subject to any of the events listed in clause 13.1.1) to clause 13.1.3, or FC reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract on the due date for payment;

13.2.2 FC may terminate the Contract with immediate effect by giving written notice to the Client, if the Client commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; and

13.2.3 the Client may terminate the Contract at any time by giving 30 days' written notice to FC.

14. Consequences of termination

14.1 On termination of the Contract for any reason:

14.1.1 the Client shall immediately pay to FC all of FC's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, FC shall submit an invoice, which shall be payable by the Client immediately on receipt;

14.1.2 the Client shall return to FC any materials belonging to FC and any Deliverables which have not been fully paid for. If the Client fails to do so, FC may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe-keeping and will not use them for any purpose;

14.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

14.1.4 clauses which expressly or impliedly have effect after termination shall continue with full effect.

15. General

- 15.1** Force majeure: FC shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from providing any of the Services for more than eight weeks, FC shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client.
- 15.2** Assignment and subcontracting: FC may at any time assign, transfer, charge, subcontract or deal in any other manner with any of its rights under the Contract and may subcontract or delegate in any manner any of its obligations under the Contract to any third party or agent. The Client shall not, without the prior written consent of FC, assign, transfer, charge, subcontract or deal in any other manner with any of its rights or obligations under the Contract.
- 15.3** Notices: Any notice to be given pursuant to this Contract must be signed and sent to the other party at its principal place of business, or to such email address provided to the sender for communicating in relation to this Contract. Any notice must be sent by one of the following methods and shall be deemed received as follows:
- 15.3.1** if delivered personally, when left at such address;
 - 15.3.2** if sent by recorded delivery, at 9.00 am on the second business day after posting;
 - 15.3.3** if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or
 - 15.3.4** if a copy is sent as an attachment to an email, at 9.00 am on the business day after sending, provided that it is followed by the original signed notice being sent by one of the methods stated in clauses to 15.3.1 to 15.3.3 within 24 hours of such email.

This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action.

- 15.4** Waiver: A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right under the Contract or by law shall constitute a waiver of that or any other right, nor preclude or restrict its further exercise. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

- 15.5** Severance: If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 15.6** No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.7** Third parties: A person who is not a party to the Contract shall not have any rights in connection with it.
- 15.8** Variation: Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed by FC in writing.
- 15.9** Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England.

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