

Client terms and conditions

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1. Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
"Charges"	the charges payable by the Client for the supply of the Services in accordance with clause 5.
"Client"	the person or firm who purchases Services from MH&A.
"Client Default"	has the meaning set out in clause 4.2.
"Commencement Date"	has the meaning given in clause 2.2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 10.5.
"Contract"	the contract between MH&A and the Client for the supply of Services in accordance with these Conditions, incorporating the Proposal, any attachments and any documents expressly referred to in the Proposal and these Conditions
"Deliverables"	the deliverables set out in the Proposal produced by MH&A for the Client.
"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.
"MH&A"	Matt Hamnett & Associates Ltd registered in England and Wales with company number 11197120.
"MH&A Materials"	has the meaning set out in clause 4.1.7.
"Order"	the Client's order for Services as set out in the Client's written acceptance of MH&A's Proposal.
"Proposal"	MH&A's quotation for Services.
"Services"	the services, including the Deliverables, supplied by MH&A to the Client as set out in the Proposal.
"Specification"	the description or specification of the Services set out in the Proposal.

- 1.2. Interpretation:
- 1.2.1. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.2. Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3. A reference to **writing** or **written** includes email but not fax.

2. BASIS OF CONTRACT

- 2.1. The Order constitutes an offer by the Client to purchase Services from MH&A in accordance with these Conditions.
- 2.2. The Contract will only be formed when MH&A accepts the Order by issuing its standard engagement letter at which point and on which date the Contract shall come into existence ("Commencement Date").
- 2.3. Any samples, drawings, descriptive matter or advertising issued by MH&A, and any descriptions or illustrations contained in MH&A'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 have any contractual force.
- 2.4. 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 law, trade custom, practice or course of dealing.
- 2.5. The Proposal and any other quotation given by MH&A will constitute an invitation to treat and not an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1. MH&A shall supply the Services to the Client in accordance with the Specification in all material respects.
- 3.2. MH&A 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 for performance of the Services.
- 3.3. MH&A reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and MH&A shall notify the Client in any such event.
- 3.4. MH&A 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 Order and any information it provides in the Proposal are complete and accurate.
- 4.1.2. co-operate with MH&A in all matters relating to the Services.
- 4.1.3. if the Services will be provided at the Client's premises, provide MH&A, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by MH&A.

- 4.1.4. provide MH&A with such information and materials as MH&A may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects.
- 4.1.5. prepare the Client's premises for the supply of the Services.
- 4.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 4.1.7. keep all materials, equipment, documents and other property of MH&A ("**MH&A Materials**") at the Client's premises in safe custody at its own risk, maintain MH&A Materials in good condition until returned to MH&A, and not dispose of or use MH&A Materials other than in accordance with MH&A's written instructions or authorisation.
- 4.1.8. comply with any additional obligations as set out in the Proposal.
- 4.2. If MH&A'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. without limiting or affecting any other right or remedy available to it, MH&A shall 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 in each case to the extent the Client Default prevents or delays MH&A's performance of any of its obligations.
 - 4.2.2. MH&A shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from MH&A's failure or delay to perform any of its obligations as set out in this clause 4.2.
 - 4.2.3. the Client shall reimburse MH&A on written demand for any costs or losses sustained or incurred by MH&A arising directly or indirectly from the Client Default.
- 4.3. The Client agrees that it will not, without the prior written consent of MH&A, directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person during the term of the Contract or for a period of 6 months following the termination or expiry of the Contract solicit or entice, or endeavour to solicit or entice, away from MH&A any person employed or engaged by MH&A in the then preceding 12 months and whose role either wholly or partly relates to the supply of the Services and/or Deliverables and/or the performance of the Contract (a "**Restricted Associate**"). For the purposes of this clause 4.3 "**solicit**" or "**entice**" means the soliciting or enticing of a Restricted Associate with a view to engaging such person as an employee, director, sub-contractor, consultant or independent contractor or through a company owned by a Restricted Associate or their family, but will not apply in the case of a Restricted Associate responding without enticement to a job advertisement which is capable of being responded to by members of the public (or sections thereof) generally.
- 4.4. Clause 4.3 will not apply if, immediately upon the engagement of a Restricted Associate by the Client, the Client pays MH&A an amount equal to 111 Business Days' of the charges applicable to such person calculated in accordance with MH&A's daily fee rates set out in the Proposal.
- 4.5. Clauses 4.3 and 4.4 shall survive termination of the Contract.
- 5. **CHARGES AND PAYMENT**
 - 5.1. The Charges for the Services will be:

- 5.1.1. if the Proposal specifies that the Charges shall be calculated on a time and materials basis:
 - 5.1.2. the Charges shall be calculated in accordance with MH&A's daily fee rates, as set out in the Proposal.
 - 5.1.3. MH&A's daily fee rates for each individual are calculated on the basis of an eight-hour day from 9.00 am to 5.00 pm worked on Business Days; and
 - 5.1.4. in all other circumstances, the fees set out in the Proposal.
- 5.2. Unless otherwise specified in the Proposal, MH&A shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom MH&A engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by MH&A for the performance of the Services, and for the cost of any materials.
- 5.3. MH&A shall invoice the Client monthly in arrears.
- 5.4. The Client shall pay each invoice submitted by MH&A:
 - 5.4.1. within 10 days of the date of the invoice; and
 - 5.4.2. in full and in cleared funds to a bank account nominated in writing by MH&A, and time for payment shall be of the essence of the Contract.
- 5.5. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by MH&A to the Client, the Client shall, on receipt of a valid VAT invoice from MH&A, pay to MH&A 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.
- 5.6. If the Client fails to make a payment due to MH&A under the Contract by the due date, then, without limiting MH&A's remedies under clause 8, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by MH&A.
- 6.2. MH&A grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy the Deliverables (excluding materials provided by the Client) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3. The Client shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2.
- 6.4. The Client grants MH&A a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to MH&A for the term of the Contract for the purpose of providing the Services to the Client.

7. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 7.1. MH&A has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover MH&A has been able to arrange and the Client is responsible for making its own arrangements for the insurance of any excess loss.
- 7.2. References to liability in this clause 7 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 7.3. Nothing in this clause 7 shall limit the Client's payment obligations under the Contract.
- 7.4. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 7.4.1. death or personal injury caused by negligence;
 - 7.4.2. fraud or fraudulent misrepresentation; and
 - 7.4.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 7.5. Subject to clause 7.3 (No limitation in respect of deliberate default), and clause 7.4 (Liabilities which cannot legally be limited), MH&A's total liability to the Client for all loss or damage shall not exceed an amount equal to the aggregate Charges paid to MH&A under the Contract in the 12 months prior to date on which such loss or damage was incurred.
- 7.6. The caps on MH&A's liabilities shall be reduced by:
- 7.6.1. payment of an uncapped liability;
 - 7.6.2. amounts awarded by a court or arbitrator, using their procedural or statutory powers in respect of costs of proceedings or interest for late payment.
- 7.7. Subject clause 7.3 (No limitation in respect of deliberate default), clause 7.3 (No limitation of Client's payment obligations) and clause 7.4 (Liabilities which cannot legally be limited), this clause 7.7 sets out the types of loss that are wholly excluded:
- 7.7.1. loss of profits.
 - 7.7.2. loss of sales or business.
 - 7.7.3. loss of agreements or contracts.
 - 7.7.4. loss of anticipated savings.
 - 7.7.5. loss of use or corruption of software, data or information.
 - 7.7.6. loss of or damage to goodwill; and
 - 7.7.7. indirect or consequential loss.
- 7.8. MH&A has given commitments as to compliance of the Services with relevant specifications in clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 7.9. Unless the Client notifies MH&A that it intends to make a claim in respect of an event within the notice period, MH&A shall have no liability for that event. The notice period for an event shall start on the day on which the Client became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

7.10. This clause 7 shall survive termination of the Contract.

8. TERMINATION

8.1. Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party one month's written notice.

8.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

8.2.1. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

8.2.2. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

8.2.3. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

8.3. Without affecting any other right or remedy available to it, MH&A may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment.

8.4. Without affecting any other right or remedy available to it, MH&A may suspend the supply of Services under the Contract or any other contract between the Client and MH&A if:

8.4.1. the Client fails to pay any amount due under the Contract on the due date for payment.

8.4.2. the Client becomes subject to any of the events listed in clause 8.2.2 or clause 8.2.3, or MH&A reasonably believes that the Client is about to become subject to any of them; and

8.4.3. MH&A reasonably believes that the Client is about to become subject to any of the events listed in clause 8.2.1.

9. CONSEQUENCES OF TERMINATION

9.1. On termination or expiry of the Contract:

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

9.1.2. the Client shall return all of MH&A Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then MH&A 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 not connected with the Contract.

9.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

- 9.3. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

10. GENERAL

- 10.1. Force majeure. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

10.2. Assignment and other dealings.

- 10.2.1. MH&A may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

- 10.2.2. The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of MH&A.

10.3. Confidentiality.

- 10.3.1. Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, Clients, clients or MH&As of the other party, except as permitted by clause 10.3.2.

- 10.3.2. Each party may disclose the other party's confidential information:

- 10.3.3. To its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and

- 10.3.4. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 10.3.5. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

10.4. Entire agreement.

- 10.4.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

- 10.4.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- 10.4.3. Nothing in this clause shall limit or exclude any liability for fraud.

- 10.5. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

- 10.6. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A

failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 10.7. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 10.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

10.8. **Notices.**

10.8.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to mh@mh-a.co.uk.

10.8.2. Any notice shall be deemed to have been received:

10.8.2.1. if delivered by hand, at the time the notice is left at the proper address.

10.8.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or

10.8.2.3. if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 10.8.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

10.8.3. This clause 10.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

- 10.9. **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 10.10. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

- 10.11. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.