



G-Cloud 15 Terms and Conditions

Important: In the event that a current, signed agreement exists between S8080 and your Organisation, the terms of that agreement shall take precedence and supersede the Terms and Conditions outlined below.

By signing this order, supplying a purchase order number or giving S8080 permission to proceed by email, you agree to abide by these T+Cs. There's nothing awful in them, but it's probably best that you read them.

1. Definitions

The following words and expressions have the following meanings:

'Acceptance Date' the date on which a Website is accepted, in accordance with the Proposal;

'Acceptance Tests' any acceptance tests for a Website as contained in the Proposal;

'Completion Date' the date on which successful completion is planned to occur, as set out in the Proposal;

'Confidential Information' all business, technical, financial or other information created or exchanged between the parties;

'Content' all text, graphics, logos, photos, images, sound, illustrations and other material featured, displayed or used in a Website;

'Customer Content' the Customer's Software and supplied Content (including all enhancements and corrections);

'Deposit' any initial payment to S8080, as stated in the Proposal;

'Documentation' the user manuals, technical documentation and training manuals for a Website;

'Effective Date' means the date stated in the Method Statement;

'IPR' all patents, trademarks, domain names, designs, copyrights and database rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing) and all other IPR of a similar or corresponding character which may subsist now or in the future in any part of the world;

'New Software' all the Software (including all enhancements and corrections) other than S8080 Software, the Customer Content and the Third Party Software;

'Method Statement' the detailed written scope of work from S8080 to the Customer;

'Price' the sum to be paid by the Customer to S8080 for the Services;

'Proposal' the proposal document from S8080 to the Customer, outlining generic project information, for the provision of the Services;

'Services' the services to be provided by S8080 to the Customer as stated in the Proposal and Method Statement which may include web development, hosting, training of staff, consultancy services, ongoing maintenance and design work;

'Software' all data, technical specifications, logic, logic diagrams, flow charts, templates, orthographic representations, algorithms, modules, sub-routines, file structures, coding sheets, coding, source or object codes, listings, test data, test routines, diagnostic programs or other material relating to or comprising part of a Website;

'S8080 Software' S8080's proprietary Software (including all enhancements and corrections);

'Term' the term as agreed in the Proposal as amended by the Method Statement save where terminated in accordance with these Ts and Cs.

'Third Party Software' third party Software (including all enhancements and corrections);

'Website' a website to be developed by S8080 in accordance with the Method Statement; and

'Working Day' 9.00 am to 5 pm Monday to Friday excluding bank holidays.

In the event of any conflict between the Proposal, Method Statement and these Ts and Cs, the Method Statement shall take precedence.

2 The Services

2.1 Subject to these Ts and Cs and receiving payment of the Price from the Customer, S8080 shall from the Effective Date provide the Services to the Customer.

2.2 S8080 hereby grants to the Customer under these Ts and Cs a royalty free, non-exclusive licence to use the Software supplied hereunder for the purpose only for the duration of the Term.

2.3 S8080 reserves all other rights and the Customer shall not rent, sell, redistribute, duplicate all or any part of the Software without the written consent of S8080.

2.4 The Customer shall not migrate the Website to an alternative hosting provider without the written consent of S8080.

2.5 During the course of working with you, we may collect information and items from you and others relevant to the project scope. These may include: information received by email, paper-based documents, physical objects and digital files provided on physical media. We will securely recycle or destroy correspondence, items, other documents and information that we store, electronically or otherwise, that are more than three years old (from the project Method Statement date). You must tell us if you require the return or retention of any specific documents for a longer period. S8080 reserve the right to charge for return or retention for a longer period

2.6 Both parties undertake to use reasonable endeavours to ensure that the Services proceed on the terms set out in the Proposal as amended by the Method Statement.

2.7 Whilst the Services are being provided, the Customer and S8080 shall give each other's staff such access to their respective premises as the other may reasonably require to comply with these Ts and Cs.

2.8 S8080 shall use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates are estimates only and subject to condition 5.4 time shall not be of the essence.

3 Customer's duties

The Customer shall deliver the Customer Content to S8080, where relevant, in the agreed format, by the agreed date and the Customer shall ensure it is correct and shall update the Customer Content when required.

4 Changes or extra services

4.1 The Customer may request changes to the Services, or extra services, by giving written notice to S8080. On receipt of a request, S8080 shall notify the Customer of the terms upon which S8080 will perform the change, including the effect on the Price and timescales, by

issuing a change request. The Customer shall, within 5 working days of the date of S8080's written notice, confirm whether it wishes the variation to proceed. If the terms of the change request cannot be agreed, the request will be withdrawn by you and no change will be made.

4.2 S8080 reserves the right to make a charge for issuing a change request submitted by the Customer if the change requires further investigation by our staff.

5 Price and payment

5.1 The Customer shall pay S8080 a Deposit, where requested, and pay the balance of the Price in accordance with the Proposal and Method Statement.

5.2 The Price is inclusive of all labour and materials but VAT and expenses shall be charged in accordance with the Proposal and Method Statement.

5.3 In the event that Third-Party Software is used in the development or maintenance of a Website, the initial cost of obtaining the necessary licences shall be included in the Price but any ongoing costs of such licences shall be borne exclusively by the Customer.

5.4 All payments to S8080 shall be made within 30 days after receipt of S8080's invoices.

5.5 S8080 shall have the right to raise interim invoices during the provision of the Services.

5.6 All annual subscriptions payable by the Customer shall be payable in advance.

5.7 Without prejudice to any other rights that S8080 may have S8080 shall have the right to suspend the Services under these Ts and Cs on 30 days' written notice in the event of any payment due under these Ts and Cs not being received by S8080 within the 30 days specified in condition 5.4.

5.8 If the Customer fails to pay S8080 any sum due under to these Ts and Cs, the Customer shall be liable to pay interest to S8080 on such sums from the due date for payment at the rate of 5% above the base rate from time to time of Lloyds TSB Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment.

5.9 In the event of termination of these Ts and Cs S8080 shall have the right to recover all costs and expenses due to S8080 under these Ts and Cs.

6 Warranty

6.1 S8080 confirms to the Customer that the Services will be provided in a timely and orderly fashion by skilled and experienced personnel acting with due care and skill and in accordance with industry practice.

6.2 S8080 makes no warranty in relation to the accessibility of a Website in the event the Customer modifies the Website save as specifically agreed in the Proposal or as amended in the Method Statement.

6.3 S8080 will fix any bugs found in the original scoped Website for a period of 90 days following 'go-live'. During this period, if you advise us of any issues, we will seek to fix these problems free of charge, provided the Customer has made no amendments to the underlying code of the Website

6.4 Where a Website is hosted with a supplier to S8080 and, as a result of a hosting issue (which shall be determined at the sole discretion of S8080 and validated by S8080's monitoring software and the hosting company monitoring software), the Website is unavailable for more than 2 hours in any Working Day, S8080 shall refund to the Customer the daily pro-rata cost of the hosting the Website for that entire day.

6.5 In the event of the Website becoming unavailable the Customer must notify, via email or telephone, S8080 as soon as possible, and for the purposes of condition 6.4, the 2 hours down-time shall run for the time of notification by the Customer to S8080. Where the Website becomes available within the 2 hours from the time of notification no pro-rata refund shall be payable.

7 Intellectual property

7.1 The Customer warrants and represents to S8080 that the use and operation of the Customer Content will not infringe the IPR of any third party. The Customer agrees to indemnify S8080 against any and all liability, loss, damage, costs, legal costs, professional and other expenses of any nature whatsoever incurred or suffered by S8080 whether direct, indirect or consequential arising out of any dispute or contractual, tortious or other claims or proceedings brought by a third party alleging infringement of his IPR by the Website where such alleged infringement arises from the Customer Content or arising as a direct result of any alteration or modification to the Website, the Content or the Software ('Package') or any part of them by the Customer or as a result of the use of the Package or any part of it in combination with hardware or software not supplied or approved by S8080.

7.2 The right, title and interest (including all IPR) in S8080 Software, New Software, templates and documentation ("the Potentially Transferable Rights") shall be retained by S8080, or as the case may be assigned separately or collectively by S8080 to the Customer in accordance with the Proposal. In the event that the Proposal makes no specific provision for assignment of IPR to the Customer, the right, title and interest in the Potentially Transferable Rights shall be retained by S8080.

7.3 Upon payment for the Services under this agreement, S8080 will assign to the Customer IPR in all graphic design work specifically for the Services under this agreement.

7.4 Where open source software is used to deliver the Services, the Customer undertakes that it will comply with the terms of the open source software licences.

8 Data Protection Indemnity

For the purpose of the Data Protection Act 2018

("the Act"), the Customer acknowledges that certain personal data about users of a Website may be captured by the Customer. If this is the case, the Customer shall obtain the proper consent of the users or any applicable third parties to the collection, storing or processing of their personal data as required by the Act. The Customer shall indemnify S8080 from and against all claims by any party arising out of the Customer's misuse of personal data or its failure to obtain the consent described in this condition 8.

9 Confidentiality

9.1 During the provision of the Services and after termination or expiration of these Ts and Cs for any reason for a period of 12 months starting on Completion Date, the following obligations shall apply to the party disclosing confidential information ('Disclosing Party') to the other party ('Receiving Party').

9.2 Subject to condition 9.3, the Receiving Party:

9.2.1 may not use any confidential information for any purpose other than the performance of his obligations under these Ts and Cs;

9.2.2 may not disclose any confidential information to any person except with the prior written consent of the Disclosing Party; and

9.2.3 shall make every effort to prevent the use or disclosure of the confidential information.

9.3 The obligations of confidence referred to in the provisions of this condition shall not apply to any confidential information that:

9.3.1 is in the possession of the Receiving Party or is otherwise in the public domain prior to its receipt by the Receiving Party;

9.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;

9.3.3 is required to be disclosed by any applicable law or regulation.

9.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party agrees that in the event of breach of this condition the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this condition in addition to any other remedies to which he may be entitled.

9.5 The obligations of the parties under this condition shall survive the expiry or the termination of these Ts and Cs for whatever reason.

10 Liability

10.1 Notwithstanding any other provision in these Ts and Cs, S8080's liability to the Customer for death or injury resulting from its own negligence or that of its employees, agents or sub-contractors shall not be limited.

10.2 S8080's entire liability to the Customer in respect of any breach of his contractual obligations, any breach of warranty, any representation, statement or tortious act or omission including negligence arising under or in connection with these Ts and Cs shall be limited to the Price actually paid to date by the Customer for the Services.

10.3 S8080 shall not be liable to the Customer for any indirect or consequential loss the Customer may suffer even if the loss is reasonably foreseeable or S8080 was advised of the possibility of the Customer incurring it.

10.4 For the avoidance of doubt S8080 shall have no liability to the Customer where the Customer suffers data loss including, without limitation, loss of data arising from Customer deletion, coding errors, or external interception or hacking.

11 Termination

11.1 A party ('Initiating Party') may terminate these Ts and Cs immediately by written notice to the other party ('Breaching Party') at any time after the occurrence of an event specified in condition 11.2.

11.2 The events are:

11.2.1 the Breaching Party committing a material breach of these Ts and Cs and failing to remedy the breach within 30 days of notice from the Initiating Party detailing the breach;

11.2.2 the Breaching Party passing a resolution for winding up, a court of competent jurisdiction making an order for the Breaching Party's winding up or the presentation of a petition for the Breaching Party's winding up that is not dismissed within 7 days (other than, in each case, for the purposes of solvent amalgamation or reconstruction in such a manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the Breaching Party's obligations under these Ts and Cs);

11.2.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over or an encumbrancer taking possession of or selling an asset of the Breaching Party; or

11.2.4 the Breaching Party making an arrangement or composition with his creditors generally or making an application to a court of competent jurisdiction for protection from his creditors generally.

11.3 An act or omission by a person who controls, is under common control with, or is controlled by a party that would be a breach of these Ts and Cs on his part if it were an act or omission of the party shall be deemed to be a breach of these Ts and Cs by the party.

11.4 Termination of these Ts and Cs for whatever reason shall not affect either:

11.4.1 the accrued rights and liabilities of the parties arising in any way out of these Ts and Cs at the date of termination including without limitation the right to recover damages against the other; or

11.4.2 provisions that are expressed to survive these Ts and Cs, which shall remain in full force and effect.

11.5 In the event of termination of these Ts and Cs the Customer shall be liable for all costs and expenses actually incurred by S8080 up to and including the date of termination.

11.6 Notwithstanding any other condition of these Ts and Cs, the Customer and S8080 has the right to terminate these Ts and Cs on three months written notice for any reason whatsoever. S8080 reserves the right to charge a fee to be agreed between the Customer and S8080 to cover the cost of closing down or transferring the Services.

12 Non-solicitation of staff

The Customer agrees that during the term of these Ts and Cs and for 12 months after termination, it will not directly or indirectly canvas with a view to offering or providing employment to, offer to contract with or entice to leave any employee of or contractor to S8080 engaged in the performance of the Services without the prior written consent of S8080.

13 Force majeure

13.1 Neither party shall be deemed to be in breach of these Ts and Cs or otherwise liable to the other party for any delay in performance or any non-performance of any obligations under these Ts and Cs (and the time for performance shall be extended accordingly) if and to the extent that the delay or non-performance is due to an event or circumstance beyond the reasonable control of that party ('an event of force majeure').

13.2 The party relying on the condition 13.1 shall promptly notify the other party of the nature and extent of the circumstances giving rise to the event of force majeure.

13.3 If the event of force majeure prevails for a continuous period of 3 months after the date on which it began, the other party may give notice to the party terminating these Ts and Cs.

14 Invalidity

14.1 If any provision of these Ts and Cs is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction:

14.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision; and

14.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision, shall not be affected or impaired in any way.

14.2 If any provision of these Ts and Cs is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, that provision shall be divisible from these Ts and Cs and the validity of the remaining provisions shall not be affected.

15 General

15.1 The parties agree that they will enter into any further documents that may be required to give effect to the terms of these Ts and Cs.

15.2 Notices under these Ts and Cs shall be in writing, sent to the person, and to the address or electronic mail address, given in the Proposal (or such other address, electronic mail address or person as the relevant Party may notify to the other Party) and shall be delivered personally, sent by electronic mail or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of electronic mail, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 16 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by electronic mail, to the electronic mail address of the Party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

15.3 The parties agree that these Ts and Cs is subject to the laws of England and Wales, and also to the exclusive jurisdiction of the Courts of England and Wales.

15.4 The parties agree that all the terms of these Ts and Cs are contained within these Ts and Cs, and that no third party shall have any rights under it pursuant to the Contracts (Rights of Third Parties) Act 1999.

15.5 Nothing in these Ts and Cs is intended to, or shall operate to, create a partnership between the Parties, or to authorise either party to act as agent for the other.

15.6 Each of the parties acknowledges and agrees that, in entering into these Ts and Cs it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of these Ts and Cs, other than as expressly set out in these Ts and Cs.

15.7 The rights and remedies provided for by these Ts and Cs are cumulative with any rights or remedies provided by law.

15.8 No party shall, without the prior written consent of the other parties, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Ts and Cs.

15.9 These Ts and Cs shall apply to the contract between the Customer and S8080 to the exclusion of any terms and conditions put forward by the Customer.