

CONTRACT FOR WEBSITE/PRODUCTS

**Dated**

**2023**

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**TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**

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**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 8 (LIMITATION OF LIABILITY).**

**1. INTERPRETATION**

**THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.**

**1.1 Definitions:**

<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>"Charges"</b>	the charges payable by the Customer for the supply of the Services in accordance with clause 5 (Charges and payment).
<b>"Commencement Date"</b>	has the meaning given in clause 2.2.
<b>"Conditions"</b>	these terms and conditions as amended from time to time in accordance with clause 11.5.
<b>"Contract"</b>	the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.
<b>"Control"</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly..
<b>"Customer"</b>	the person or firm who purchases Services from us
<b>"Customer Default"</b>	has the meaning set out in clause 4.2.
<b>"Deliverables"</b>	the deliverables set out in the Order produced by the Supplier for the Customer.
<b>"Intellectual Property Rights"</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

"Order"	the Customer's order for Services as set out in the Customer's purchase order form.
"Services"	the services, including the Deliverables, supplied by to the Customer as set out in the Specification.
"Specification"	the description or specification of the Services provided in writing in the Order to the Customer.
"Supplier"	Brace Creative registered in England and Wales with company number 07053595. Any references in the Agreement "Brace", "we", "us" or "our".
"Supplier Materials"	has the meaning set out in clause 4.1.5.

## 1.2 Interpretation:

1.2.1 A reference to legislation or a legislative provision:

- (a) is a reference to it as it is in force as at the date of this Contract; and
- (b) shall include all subordinate legislation made at the date of this Contract under that legislation or legislative 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 faxes.

## 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Order has been communicated and at either written acceptance of the Order, or by acceptance of work detailed on the Order commencing with the Customer's knowledge, 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 us and any descriptions or illustrations 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 Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by us shall not constitute an offer, and is only valid for a period of 28 Business Days from its date of issue.

## 3. SUPPLY OF SERVICES

3.1 We shall supply the Services to the Customer in accordance with the Specification in all material respects.

- 3.2 We shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 We reserve 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 we shall notify the Customer in any such event.
- 3.4 We warrant to the Customer that the Services will be provided using reasonable care and skill.

#### **4. CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
  - 4.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate before work commences;
  - 4.1.2 co-operate with us in all matters relating to the Services;
  - 4.1.3 provide Brace its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by us;
  - 4.1.4 provide us with such information and materials as we 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 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; and
  - 4.1.6 Any variations of the Services requested must be agreed by the Parties in writing.
- 4.2 If Brace's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
  - 4.2.1 without limiting or affecting any other right or remedy available to it, we shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Brace's performance of any of its obligations;
  - 4.2.2 We shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from client's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - 4.2.3 the Customer shall reimburse on written demand for any costs or losses sustained or incurred by Client arising directly or indirectly from the Customer Default.

#### **5. CHARGES AND PAYMENT**

- 5.1 The Charges for the Services shall be calculated on a time and materials basis:

- 5.1.1 the Charges shall be calculated in accordance with the project scope, additional products needed (i.e plug-ins, servers, software), which will be displayed within the proposal; and
- 5.1.2 any additional work requested and provided outside of the Agreed Proposal will be subject to further charge at our usual hourly rates. The Customer will be informed by the Supplier the details of these additional costs prior to the additional work commencing.
- 5.2 We shall issue a proforma invoice the Customer the full amount but my agreement there will be a payment breakdown, as agreed by the Parties.
- 5.3 The Customer shall pay each invoice submitted by us
  - 5.3.1 within 14 days of the date of the invoice or in accordance with any credit terms agreed by us; and
  - 5.3.2 in full and in cleared funds to a bank account nominated in writing by us, and
  - 5.3.3 time for payment shall be of the essence of the Contract.
- 5.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**).
- 5.5 If the Customer fails to make a payment due to us under the Contract by the due date, then, without limiting Brace's remedies under clause 9, the Customer 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 5.5 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%.
- 5.6 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 Customer) shall be owned by Brace.
- 6.2 We grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 6.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 6.2 without our consent or agreement.
- 6.4 The Customer grants Brace a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to us for the term of the Contract for the purpose of providing the Services to the Customer.
- 6.5 The Customer confirms any copy or imaginary to be used for the Services they have expressed authority and permission to use. Brace do not hold any responsibility for copy or imaginary provided to them by the Customer, and

used in the provision of service to the Customer, that have been obtained without consent or permission.

## **7. DATA PROTECTION**

The parties shall comply with their data protection obligations as per the relevant legislation enforce at the time.

## **8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 8.1 Brace has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £20,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover Brace has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 References to liability in this clause 8 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in this clause 8 shall limit the Customer's payment obligations under the Contract.
- 8.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
  - 8.4.1 death or personal injury caused by negligence;
  - 8.4.2 fraud or fraudulent misrepresentation; or
  - 8.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.5 Subject to clause 8.3 (No limitation of customer's payment obligations) and clause 8.4 (Liabilities which cannot legally be limited), this clause 8.5 sets out the types of loss that are wholly excluded:
  - 8.5.1 loss of profits
  - 8.5.2 loss of sales or business.
  - 8.5.3 loss of agreements or contracts.
  - 8.5.4 loss of anticipated savings.
  - 8.5.5 loss of use or corruption of software, data or information.
  - 8.5.6 loss of or damage to goodwill; and
  - 8.5.7 indirect or consequential loss.
- 8.6 This clause 8 shall survive termination of the Contract.

## **9. TERMINATION**

- 9.1 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.
- 9.2 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:
  - 9.2.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 60 days of that party being notified in writing to do so;

- 9.2.2 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 9.2.3 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
  - 9.2.4 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.
- 9.3 Without affecting any other right or remedy available to it, we may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment; or
- 9.3.1 there is a change of Control of the Customer.
- 9.4 Without affecting any other right or remedy available to it, we may suspend the supply of Services under the Contract or any other contract between the Customer and us if
- 9.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
  - 9.4.2 the Customer becomes subject to any of the events listed in clause 9.2.3 to clause 9.2.4, or Brace reasonably believes that the Customer is about to become subject to any of them; and
  - 9.4.3 Brace reasonably believes that the Customer is about to become subject to any of the events listed in clause 9.2.2.

## **10. CONSEQUENCES OF TERMINATION**

- 10.1 On termination or expiry of the Contract the Customer shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted we shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 10.2 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.
- 10.3 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.

## 11. GENERAL

- 11.1 **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.
- 11.2 **Assignment and other dealings.**
- 11.2.1 we 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.
- 11.2.2 The Customer 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 us.
- 11.3 **Confidentiality.**
- 11.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.3.2.
- 11.3.2 Each party may disclose the other party's confidential information:
- (a) 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 11.3; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.4 **Entire agreement.**
- 11.4.1 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.
- 11.4.2 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.
- 11.4.3 Nothing in this clause shall limit or exclude any liability for fraud.



- 11.5 **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).
- 11.6 **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 default. 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.
- 11.7 **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 11.7 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.
- 11.8 **Notices.**
- 11.8.1 Any notice or other communication 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 fax to its main fax number
- 11.8.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) 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
  - (c) if sent by fax, 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 (c)*, 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.
- 11.8.3 This clause 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.
- 11.9 **Third party rights.**
- 11.9.1 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.
- 11.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.10 **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.

11.11 **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.