

trm:vs

Standard Terms and Conditions for the Supply of Services

1. Definitions

In this Agreement unless the context otherwise requires:

"Company" means trm visual solutions Limited (trm:vs)

"Charges" means the charges as agreed

"Agreement" means the Agreement between trm visual solutions Limited and the User

"Schedule" means the details of conditions pertaining the Agreement and any specification document

"Server" means the computer server equipment operated or administered by us in connection with the provision of the Services

"Services" means graphic design, photography, print management, domain name registration, web site hosting, email, web design, and any other service or facility provided by us to you

"User" means you the customer or any person who makes use of the services through you or on your behalf

2. Formation of Agreement

All Users using any service provided by the Company, do so on the understanding that by doing so, they accept the terms and conditions of business as set out below, irrespective of the mode or manner of ordering employed by the User when ordering the services.

The following constitute the terms and conditions under which the Company trades and supplies its services and related products. These Conditions (together with the terms and conditions, if any, set out in the Schedule) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

The following are the only terms and conditions upon which the Company will undertake all and any service and or supply of services.

No variation or alteration to any term or condition shall be binding unless agreed in writing by the authorised representatives of the User and the Company.

No failure or delay by either party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the agreement by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

No order which has been accepted by the Company may be cancelled by the User except with the agreement in writing of the authorised representative of the Company and in terms that the User shall indemnify the Company in full against all loss (including loss of profits), costs, damages, charges and other expenses incurred by the Company as a result of the cancellation.

The Company is entitled to suspend services if the User does not adhere to any or several conditions as set out in this document.

If any provision of these terms and conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall wherever possible remain in full force and effect.

3. Services

The Company will use reasonable endeavours to adhere to any dates proposed by either the Company or the User for the provision of Services, however any such date is to be treated as an estimate only and the Company accepts no liability for failure to meet such dates;

The Company will use all reasonable endeavours to provide reliable Services, however it is not practicable to provide such Services free of faults and the Company does not undertake to do so. In the event of a fault in Services, the User must report the fault by telephone to the Company. Upon receipt of the fault report, the Company will take all proper steps without undue delay to correct the fault. The Company shall not, in any event, be liable for interruptions of Services or downtime of a Server.

The Company may: - temporarily suspend for the purpose of repair, maintenance or improvement, part or all of the Company's Services, generally without notice - give or update instructions regarding the use of the Service which in the Company's reasonable opinion is necessary in the interests of safety, or to maintain or improve the quality of Services to the User and any such instructions shall whilst they are in force, be deemed to form part of this agreement - vary the technical specification of Service for operational reasons.

The Company undertakes to use reasonable endeavours to restore Services as soon as practicable after any such suspension.

Where the Company uses any third-party services, site search facilities, email, web hosting or search engines submission services, the Company cannot be held responsible for those third-party service commitments, quality or availability.

The Services shall be provided in accordance with the Schedule.

The Company reserves the right to use the services of sub-contractors as may be required. Any services provided by the sub-contractor will be bound by the sub-contractors' own terms and conditions. The Company and the User agree to be bound by these terms and conditions including but not limited to disclaimers for non-completion on time due to circumstances beyond reasonable control.

The Company may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Services without any liability to the User.

The Company may at any time without notifying the User make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services.

4. Content and Misuse

The User will use all reasonable endeavours to ensure that the Company's Services are used or include content that conforms to the laws of this country and will not knowingly permit any illegal use or such use that will bring the Company into disrepute;

You must not use the Services: to send or receive any material which is offensive, abusive, indecent, obscene or menacing; or in breach of confidence, copyright, privacy or any other rights; to cause annoyance, inconvenience or needless anxiety;

The Company retains the right to suspend Services immediately in the event of a breach or suspected breach by the User of any of the terms and conditions contained herein.

5. Rights in Input Material and Output Material

The property and any copyright or other intellectual property rights in any:

Input Material shall belong to the User

Any Output Material shall, unless otherwise agreed in writing between the User and the Company, belong to the Company, subject only to the right of the User to use the Output Material for the purposes of utilising the specified Services. The ownership of any intellectual property rights, copyrights or trademarks used will remain with the User, or rightful owner.

If the Company creates and presents a choice of designs to the User, only the chosen artwork is provided in fulfilment of the relevant agreement and all other designs remain the exclusive property of the Company, unless previously agreed in writing

Any Input Material or other information provided by the User which is so designated by the User and any Output Material shall so far as practical be kept confidential by the Company, and all Output Material or other information provided by the Company which is so designated by the Company shall be kept confidential by the User; but the foregoing shall not apply to any documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.

The User shall obtain any and all necessary consents and clearances to enable the Company lawfully to make use of all and any intellectual property rights, copyrights and trademarks through the Services, including without limitation, clearance and/or consents in respect of your proposed domain name. Wherever possible royalty free or public domain images may be used in the User's design. Any conflict between an unknown author of such images and publication of said images will be the full responsibility of the User.

The User shall at their own expense supply the Company with all necessary documents or other materials, and all necessary data or other information relating to the specified Services, in a suitable format and within sufficient time to enable the Company to provide the specified Services in accordance with the Agreement. The User shall ensure the accuracy of all Input Material.

The User shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Company shall have no liability for any such loss or damage, however caused.

6. Liability

The User shall indemnify the Company and keep the Company indemnified and hold the Company harmless from and against any breach by the User of these terms and conditions of business and any claim brought against the Company by a third party resulting from the provision of Services by the Company to the User and the User's use of the Services and the Server including, without limitation, all claims, actions, proceedings, losses, liabilities, damages, costs, expenses (including reasonable legal costs and expenses), howsoever suffered or incurred by the Company in consequences of the User's breach or non-observance of this Agreement;

The User acknowledges that the Company has no control over the information transmitted via the Service and that the Company does not examine the use to which the User puts the service or the nature of the information the User sends or receives. The Company hereby excludes all liability of any kind for the transmission or reception of information of whatever nature;

The Company undertakes no liability whatsoever for the acts or omissions of other providers of telecommunication service or for faults in or failures of their apparatus;

The Company is not in any way liable in Agreement or otherwise for loss whether direct or indirect of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever.

The Company makes no warranty as regards to its Services or equipment and will not be responsible for any damage allegedly suffered or claimed by the User for any reason including but not limited to loss of data and service interruptions.

In any event no claim shall be brought unless the User has notified the Company of the claim within one year of it arising.

The Company shall not be liable to the User by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms and conditions of the Agreement, for any indirect special, or consequential loss of damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Services or their use or resale by the User. The Company's total aggregate liability to the User for any claim in Contract, tort, negligence or otherwise arising out of or in connection with the provision of the Services shall be limited to the charges paid by the User in respect of the Services, which are the subject of any such claim.

The Company warrants to the User that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Agreement and any Schedule and at the intervals and within the times referred to.

The Company shall not be liable to the Client or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control.

The liability of the Company shall extend only until the completion of any services as agreed.

If, as requested, the Company delivers the output material in an electronic version only, then the Company shall not be liable in any event for any subsequent errors that may arise in the use of the material by any other parties.

Any goods or products supplied by the user to the Company as may be required to perform the services are supplied on the basis that ownership and therefore responsibility remains with the User.

The Company will take reasonable care of any goods or products supplied and will endeavour to return all goods or products in the same condition as received, but it cannot be held responsible for any loss or damage however caused.

The User is advised to ensure adequate cover to insure their property on an "all risks" basis.

7. User Responsibilities

The user acknowledges that it shall be responsible for performing the following in a reasonable, appropriate and timely manner:

Co-ordination of any decision making with other parties as may be required and to inform the Company of all outcomes.

The User accepts full and final responsibility for proof reading and checking the content of all output material produced by the Company prior to giving approval or sign off either verbally, via e-mail, in writing or by other means.

In the event that any such approved material is subsequently found to contain errors including, but not limited to, spelling or typographical errors or omissions how so ever arising then the User shall be liable for the full cost of correcting such errors.

8. Force Majeure

The Company shall not be liable to the User or deemed to be in breach of the Agreement by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following, shall be regarded as causes beyond the Company's reasonable control:

Act of God, explosion, flood, tempest, fire or accident, War or threat of war, sabotage, insurrection, civil disturbance or requisition, Acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any government parliamentary or local authority, strikes, lockouts or other industrial action or trade disputes (whether involving employees of the Company or any third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

9. Price and Payment

The fee for the supply of Services shall be as stated in the Schedule or estimate provided.

All charges payable by the User for the Services shall be in accordance with the estimate or scale of charges and rates provided by us from time to time and shall be due and payable 30 days after the date on the User's invoice.

All charges quoted are subject to review and adjustment by the Company at any time. The price of the goods or services shall be at the Company's quoted price. All prices quoted are valid for 30 days from the time of the quotation after which time the Company may alter them without giving notice to the User.

The User agrees that any changes or amends that may be required which are over and above the requirements of any initial brief will be liable to additional charges. These charges will be in accordance with the scale of charges or supplementary estimate as provided by us before commencing the extra chargeable work.

The Company reserves the right to increase the price of Services at any time to reflect any increase in the costs to the Company due to any factor beyond the control of the Company (including though not limited to any increase in the costs of labour, materials or other costs or increases in price by those who supply the Company with Services) or due to any change in delivery date or any delay caused by any instruction of the User or the failure of the User to give the Company adequate information or instruction.

Unless specifically varied in writing by the Company, the following payment terms shall apply:
All fees quoted are exclusive of VAT (if applicable) and to the extent that VAT is chargeable in respect of any Services supplied by the Company, VAT at the rate in force at the time of supply should be added to payments otherwise due. An invoice will be raised on completion of the services provided.

Without prejudice to the Company's other rights and remedies under this Agreement, if any sum payable is not paid on or before the due date, the Company shall be entitled forthwith to:

Cancel the Agreement and any other Agreement between the Company and the User

Suspend the provision of Services to the User

Charge to the User interest in accordance with The Late Payment of Commercial Debts (Interest) Act 1998, on the amount unpaid at the rate of 5%, per annum above the Bank of Scotland's base rate from time to time, until payment in full is made (interest will be calculated on a daily basis from the first date the amount becomes due until the amount is cleared in full).

Recoup the cost of any third party agents incurred should any action be undertaken to obtain settlement of the account.

A charge of £25 will be made to cover bank charges and administration costs in the event that any cheque submitted by the User fails to clear on first presentation or is subsequently returned dishonoured.

There is a minimum invoice value of £10.00 that will be invoiced for any transaction to cover administration and handling charges.

10. Default

Either party may (without limiting any other remedy) at any time terminate the Agreement by giving written notice to the other if the other commits any breach of these terms and conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the User goes into liquidation, becomes bankrupt or insolvent, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.

Bankruptcy or insolvency proceeding means bankruptcy proceedings or in Scotland sequestration proceedings, becoming insolvent, making any composition or arrangement with creditors or an assignment for their benefit, any execution, distress, diligence or seizure: or if the User is a company, being the subject of proceedings for the appointment of an administrator, going into liquidation whether voluntary or compulsory (except for the purpose of amalgamation or reconstruction) or having a receiver or administrative receiver of any assets appointed.

The User continues to be liable to pay all charges, which are due for Services during any period in which you do not comply with this Agreement.

On termination of this Agreement or suspension of the Services we shall be entitled immediately to suspend access to the Server and to remove all data located on it. The Company shall be entitled to delete all such data but may, at our discretion, hold such data for such period as the Company may decide to allow the User to collect it at their expense, subject to payment in full of any amounts withstanding and payable to the Company.

If the Company waives a breach of Agreement by the User, that waiver is limited to the particular breach. Any delay by the Company in acting upon a breach is not to be regarded in itself as a waiver.

Either party on giving at least 30 days notice to the other may terminate this Agreement. If the Company gives notice the User shall pay all charges up to the expiry of the notice. If the User gives notice, the User shall pay all charges until 30 days after the date the Company receives the notice or until expiry of the notice, whichever is the latter. The User's notice does not avoid any other liability for Services already provided. Annual recurring Services require cancellation by the User and the Company reserves the right to charge annually for the provision of these services unless the Company has received from the User written instruction to terminate these Services.

11. General

Any notice required or permitted to be given by either party to the other under these conditions shall be in writing by: post, email or fax but must be addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. If sent by email it shall, unless the contrary is proved, be deemed to be received on the day it was sent provided that it was sent prior to 5:30 p.m. or if sent by fax shall be deemed to be served on receipt of an error free transmission report provided that it was sent prior to 5:30 p.m., or if sent by post shall be deemed to be served one day following the date of posting.

Any Schedule shall form part of the Agreement

The Agreement shall in all respects be construed and operated in accordance with English Law and all parties agree to submit to the jurisdiction of the English courts

Unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce any term of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

The Company reserves the right to place a small credit on printed material produced for the User. This will usually be in the form of a small logo and or a single line of text.

The Company reserves the right to use any designs created for its own publicity purposes.