

Emerging Communications Limited

TERMS OF BUSINESS

1. DEFINITIONS AND INTERPRETATION

Agency: Emerging Communications Ltd whose registered address is 2A High Street, Thames Ditton, Surrey, KT7 0RY.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Client: the person, firm or company employing the services of the Agency.

Confidential Information: proprietary information, technical data, trade secrets, or know-how, including, but not limited to, business plans, research, product plans, products, services, client lists, markets, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances, or other business information.

Contract: the contract between the Agency and the Client for the supply of Services in accordance with these terms of business.

Corporate Identity: any name, logo, trade mark or other form of identity of the Client not designed or developed by the Agency.

Data Protection Laws: the Data Protection Act 2018, the General Data Protection Regulation (EU) 2016/679 and any laws which implement, replace, extend or re-enact those laws and regulations.

Deliverables: the deliverables set out in the Quote.

Fees: the charges payable by the Client to the Agency for the supply of the Services in accordance with *clause 6*.

Intellectual Property Rights: 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.

Quote: the detailed quote and scope of work produced by the Agency and sent in writing to the Client.

Retainer: an ongoing engagement between the Agency and the Client to provide Services of not less than a fixed number of man hours per month over an extended period.

Services: the supply of services and/or materials by the Agency to the Client as set out in the Quote.

Third Party Costs: fees payable by the Agency to third parties on behalf of the Client in accordance with *clause 6* including booking and arranging media, legal costs for trademarking, domain name registration, translation services, software licences, social media verifying costs, photography, recording, the cost of website developers etc.

The headings in these terms of business are inserted for convenience only and do not affect its construction.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

Any phrase introduced by the words **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes email.

2. SUPPLY OF SERVICES

2.1 This Contract will come into existence and take effect when the Client issues to the Agency a written acceptance of the Quote or a purchase order number pertaining to that Quote and will continue until the Services have been completed and all invoices paid when it will automatically terminate unless terminated earlier under *clause 9*.

2.2 These terms of business will apply to the exclusion of any other terms that the Client seeks to impose or incorporate, for instance by terms attached to a Client's purchase order, or which are implied by trade, custom, practice or course of dealing.

3. THE AGENCY'S RESPONSIBILITIES

3.1 The Agency will co-operate with the Client in all matters relating to the provision of the Services and/or Deliverables.

3.2 The Agency will ensure that the Services and/or Deliverables are provided with all due care, skill and diligence and that only adequately skilled and capable individuals will be used to perform the Services.

3.3 The Agency will use all reasonable endeavours to comply with the performance dates (if any) specified in the Quote but time for performance by the Agency is not of the essence of this Contract. If delays to any schedule are likely to occur, through reasons beyond the Agency's control, the Agency will alert the Client in writing as soon as reasonably possible after the Agency is made aware of the delays.

3.4 Where the Deliverables include the development of a website or landing page the Agency warrants that the website or landing page will perform substantially in accordance with the agreed functional specification and the content will be laid out as per the wireframes agreed by the Client in writing for a period of three months from the date the Client first uses any part of the website for its intended purpose or to provide any services to third parties other than for test purposes. If the website does not so perform, the Agency will, for no additional charge, carry out

any work necessary in order to ensure that the website substantially complies with such specification.

4. THE CLIENT'S RESPONSIBILITIES

- 4.1 The Client will provide such information to the Agency as the Agency may reasonably request for the purpose of providing the Services including such objective, factual evidence, documents, or information as may be necessary to substantiate statements of fact or claims to be made by or on behalf of the Client.
- 4.2 The Client warrants that all information provided by it to the Agency is accurate and complete.
- 4.3 The Client warrants that that any materials provided by it for incorporation into any Deliverables do not infringe any applicable laws, regulations or third party rights nor include material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous.
- 4.4 The Client grants the Agency a non-exclusive, non-transferable, royalty-free licence to use any Corporate Identity for the purposes of and subject to the terms of this Contract and the Client warrants that it is the beneficial owner of such Corporate Identity.
- 4.5 The Client will keep the Agency fully indemnified against all actions, proceedings, claims, demands and all related losses, damages, liability and expenses (including reasonable legal fees) incurred by the Agency as a result of any claim, actual or alleged, that:
 - 4.5.1 the Corporate Identity infringes the Intellectual Property Rights of a third party; or
 - 4.5.2 any fact or description of or concerning the Client, its products or services which was provided to the Agency by the Client and/or which the Client approved, is false, deceptive, misleading or otherwise inaccurate;
 - 4.5.3 any material supplied by the Client breaches the requirements of *clause 4.3*.

5. APPROVALS AND AUTHORITY

- 5.1 The Agency will submit all draft content, posts, articles, copy, layouts, photographs, captions, artwork, scripts and digital assets to the Client for written approval and the Client acknowledges that the Agency's ability to provide the Services is dependent on the Client's timely response to such request for approval.
- 5.2 The Client acknowledges that any delay on its part in providing the approvals requested by the Agency may result in delays to the provision of the Services and may have an impact on the Fees or performance timescales stated in the Quote or elsewhere in these terms of business.

- 5.3 Written approval by the Client will constitute authorisation for the Agency to proceed to production or publication.
- 5.4 The Client will not give written approval for anything which it knows, or ought reasonably to know, contains inaccurate, unlawful or defamatory material.

6. FEES AND PAYMENT

- 6.1 The Fees payable for the Services are set out in the Quote.
- 6.2 The Fees are inclusive of all costs for:
 - 6.2.1 all materials used by or on behalf of the Agency to produce the Deliverables and/or provide the Services;
 - 6.2.2 currency transfer fees if specified in the Quote;
 - 6.2.3 normal travel, accommodation and subsistence expenses within London; and
 - 6.2.4 general overheads and administration costs, including all costs of telephone calls, printing and stationery, delivery charges and postage costs.
- 6.3 The Fees do not include:
 - 6.3.1 currency transfer costs unless specified in the Quote; or
 - 6.3.2 additional expenses, such as travel outside of London, will be preagreed with the Client;these will be charged separately to the Client.
- 6.4 The Agency will be entitled to invoice 50% of the Fees on acceptance of the Quote and the balance in such instalments as the Agency and the Client agree in writing. The Agency will be entitled to invoice any remaining balance on completion of the Services. The Agency reserves the right to delay commencement of the Services until the Client has agreed any balance instalments in writing.
- 6.5 Third Party Costs are set out in the Quote and are stated in UK sterling as at the date of the Quote, these will be subject to currency fluctuations which will be passed on to the Client.
- 6.6 Third Party Costs are payable to the relevant third parties in advance and so the Agency will be entitled to invoice for the Third Party Costs in full on acceptance of the Quote and the Agency reserves the right not to commence the Services until the Third Party Costs have been paid by the Client in full in cleared funds to a bank account nominated in writing by the Agency
- 6.7 The Client will on receipt of a valid VAT invoice from the Agency pay to the Agency any value added tax which may be chargeable in connection with the Services.

- 6.8 Unless stated otherwise in the invoice, invoices are payable within 14 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by the Agency.
- 6.9 If the Client fails to make any payment due to the Agency by the due date for payment, then interest will be due on the overdue amount in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services will be owned by the Agency until all Fees have been paid in full.
- 7.2 On payment of the Fees in full the Agency will be deemed to assign to the Client, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including the Deliverables, except:
- 7.2.1 to the extent that the Deliverables incorporate bought in material including software, library photographs and music and the like, in which case the Agency will ensure that the Client is granted a licence to use those bought in materials by the provider of those materials and subject to the provider's terms of use for the media, territory and duration suitable for the Client's purposes; and
- 7.2.2 where the Deliverables include the design and development of a website, in which case, the copyright in any methodologies and technologies provided by the Agency for the website development will remain the property of the Agency or its licensors.
- 7.3 The Agency will obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 7.4 The Agency will, promptly at the Client's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Client may reasonably require for the purpose of securing the assignment of the Intellectual Property Rights to the Client in accordance with *clause 7.2*.
- 7.5 For the avoidance of doubt notwithstanding anything contained in these terms of business the Agency will own and retain all rights, including Intellectual Property Rights, to any and all concepts, ideas, designs, proposals and other work and materials which have at any time been presented to the Client but not included in any completed Services and/or Deliverables.
- 7.6 Provided it does not disclose any of the Client's Confidential Information, the Agency may make known the existence of the relationship between the parties and may use any materials created under this Contract to promote itself and its business, including but not limited to showing the materials on its own website and on showreels, and for entry into industry awards.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in this Contract limits or excludes the Agency's liability for:

- 8.1.1 death or personal injury resulting from its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 8.1.2 fraud or fraudulent misrepresentation by the Agency; or
 - 8.1.3 any matter in respect of which it would be unlawful for the Agency to exclude or restrict liability.
- 8.2 Subject to *clause 8.1*:
- 8.2.1 the Agency will 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, loss of business or sales, loss of agreements or contracts; loss of anticipated savings; loss of use or corruption of software, data or information; loss of damage to goodwill and/or any indirect or consequential loss arising under or in connection with this Contract; and
 - 8.2.2 the Agency'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, will in no circumstances exceed the total of the Fees payable for the Services supplied under this Contract.
- 8.3 This *clause 8* shall survive termination of this Contract.
- 8.4 The Agency will maintain in force during this Contract suitable professional indemnity and public liability insurance cover with a reputable insurer.

9. TERMINATION

- 9.1 Without limiting any other rights or remedies, either party may at any time terminate this Contract with immediate effect if:
- 9.1.1 the other is in material breach of any of obligations under this Contract and (where such breach is remediable) has failed to remedy such breach within 14 days of being required to do so; or
 - 9.1.2 any liquidator, trustee in bankruptcy, receiver, administrative receiver, administrator or similar officer is appointed in respect of the other's business.
- 9.2 Any delay by either party in exercising its rights to terminate will not constitute a waiver of those rights.
- 9.3 For the avoidance of doubt, notwithstanding that the Services may be specified to be delivered in a number of phases the Agency plans and schedules its people, resources and work load on the basis that the Services are a complete piece of work, therefore, on termination of this Contract in accordance with *clause 9.1*, the Client will immediately pay to the Agency all of outstanding unpaid invoices and interest and the Agency will be entitled to submit an invoice for the balance of any remaining Fees stated in the Quote which will be payable by the Client immediately on receipt.

10. CONFIDENTIAL INFORMATION

- 10.1 The Parties agree to maintain each other's Confidential Information in strict confidence, and will not use Confidential Information except as necessary to perform its obligations under the Contract, or as required by a court or governmental authority. Confidential Information does not include any information that is in the public domain, becomes publicly known through no fault of the receiving party or is properly received from a third party without an obligation of confidentiality.
- 10.2 This *clause 10* shall survive termination of this Contract.

11. COMPLIANCE

- 11.1 The Parties will comply in all material respects with any law, enactment and applicable regulation which arise in connection with this Contract including applicable Data Protection Laws, the Bribery Act 2010 and the Modern Slavery Act 2015.
- 11.2 Where the Agency is processing personal data for the Client as a data processor (as defined in applicable Data Protection Laws) the parties will enter into a separate data processor agreement meeting the requirements of applicable Data Protection Laws in relation to that processing.

12. RETAINERS

- 12.1 This *clause 12* applies only where the Quote states that the engagement between the Client and the Agency is a Retainer.
- 12.2 Where a Client has entered into a Retainer with the Agency the period of that Retainer, the Services and Deliverables and Fees will be as set out in the Quote relating to that Retainer.
- 12.3 Notwithstanding the provisions of *clause 6.4*, fees for the Retainer are payable by banker's standing order monthly in advance of the first of the month, or the nearest Business Day.
- 12.4 In the event that delivery of the Services and/or Deliverables is delayed for any reason beyond the Agency's control, including any delays or failures by the Client to provide approvals as envisaged in *clause 5*, the Agency may invoice the remaining Fees each month for work as it is actually delivered.
- 12.5 The parties recognise that in order to deliver Services under a Retainer the Agency plans and schedules its people, resources and work load on the basis Services and timescales set out in the relevant Quote, therefore, in order to terminate a Retainer, the following notice is required by either party:
- 12.5.1 2 month's written notice for Retainers of not more than 5 man days a month; or
- 12.5.2 3 month's written notice for Retainers of not more than 10 man days a month;

- 12.5.3 4 month's written notice for Retainers of not more than 15 man days a month;
 - 12.5.4 5 month's written notice for Retainers of not more than 20 man days a month;
 - 12.5.5 as specified in the Quote for Retainers of more than 20 man days per month.
- 12.6 The parties recognise it is the nature of a Retainer that the Client may wish for the Services to be provided under the Retainer to change from time to time. Where the Client requests significant changes to the Services specified in the Quote the requested changes will not take effect until the parties have discussed and agreed a revised scope of Services including revised timescales and Fees and the Client issues to the Agency a written acceptance of a new Quote or a purchase order number pertaining to that new Quote setting out the revised terms. Any such new Quote is subject to these terms of business.
- 12.7 Until such time as the Client issues to the Agency a written acceptance of a new Quote or a purchase order number pertaining to that new Quote setting out the revised terms as envisaged in *clause 12.6*, the Agency will perform its obligations as set out in the original Quote and will be entitled to charge such additional fees as are reasonable for any additional work the Client requires the Agency to undertake on its behalf.

13. OTHER IMPORTANT TERMS

- 13.1 This Contract may only be varied by a document signed by both the Agency and the Client.
- 13.2 The Contracts (Rights of Third Parties) Act 1999 does not apply to this Contract and no person other than the Agency and the Client has any rights under it.
- 13.3 Neither party will be liable to the other for an event beyond its reasonable control including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party 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 Agency or subcontractors. If such an event continues for more than 4 weeks either party may terminate this Contract immediately by giving the other written notice.
- 13.4 The Agency may from time to time sub-contract or delegate its obligations under this Contract provided that it ensures any company or person to whom work is sub-contracted or delegated is suitably qualified and skilled.
- 13.5 The Client may not transfer or sub-contract any rights or obligations under this engagement without the Agency's consent.
- 13.6 Each of the clauses in these terms of business operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining clauses will remain in full force and effect.

- 13.7 A waiver of any right under this Contract or law is only effective if it is in writing and will not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under this Contract or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict its further exercise of that or any other right or remedy.
- 13.8 Any notice required to be given to a party under or in connection with this Contract must be in writing and delivered to the other party personally or sent by email, prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business. Any such notice will be deemed to have been duly received if delivered personally, when left at such address or, if sent by email on receipt of a delivery or read return mail, in the case of the Agency from accounts@emergingcomms.com or in the case of the Client from the email address of the main Client contact, if sent by prepaid first-class post or recorded delivery, at 9.00am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 13.9 This Contract and any dispute or claim arising out of or in connection with it will be governed by and construed in accordance with the law of England and Wales.
- 13.10 The courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim arising out of this Contract.