

The Client's attention is particularly drawn to the provisions of clause 8.**1 Basis of contract**

1.1 By sending a Specification and a quotation to the Client, Hello makes an offer to supply the Services and any Deliverables on these Terms.

1.2 Any such Specification and quotation given by Hello shall only be valid for acceptance for a period of 30 days from the date they are issued.

1.3 When the Client accepts Hello's Specification and quotation on these Terms the Contract shall come into existence. Such acceptance may be delivered in writing or by email.

1.4 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Hello which is not set out in the Contract.

1.5 These Terms apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Specification sets out the full description of the Services and any Deliverables, and shall supersede and replace any prior proposal produced by the Client. It is the Client's responsibility, before entry into the Contract, to ensure that the Specification is adequate for its requirements.

2 Supply of Services

2.1 Hello shall supply the Services to the Client in accordance with the Specification in all material respects.

2.2 Hello shall use reasonable endeavours to meet any performance dates set out in the Specification, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

2.3 Hello shall have the right to make any changes to the Services which are necessary to comply with any applicable law, or which do not materially affect the nature or quality of the Services, and Hello shall notify the Client in any such event.

2.4 Hello warrants to the Client that the Services will be provided using reasonable care and skill.

2.5 Hello does not provide website hosting although this can be arranged through a third party supplier. Any arrangement relating to hosting shall be subject to such supplier's terms.

3 Customer's obligations

3.1 The Client shall:

3.1.1 co-operate with Hello in all matters relating to the Services;

3.1.2 use its reasonable endeavours to respond to Hello to the timescales set out in any agreed Gantt chart;

3.1.3 deliver any content and information required by Hello in a timely manner;

3.1.4 provide Hello with such information and materials as Hello may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;

3.1.5 ensure that Hello is entitled to use for the purposes of the Services any Intellectual Property Rights in any content which is provided by, or specified by, the Client. It shall be the Client's responsibility to notify Hello if it does not own any content that it requires Hello to use.

3.2 If Hello'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 (Customer Default):

3.2.1 Hello shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default. Hello shall be excused any breach of any of its obligations to the extent that it is prevented or delayed by the Client Default;

3.2.2 Hello shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Hello's failure or delay to perform any of its obligations as a result of a Client Default; and

3.2.3 the Client shall reimburse Hello for any costs or losses sustained or incurred by Hello arising directly or indirectly from the Client Default.

3.3 The Client accepts that:

3.3.1 Hello shall not be obliged to transfer any files to a third party server unless all invoices have been settled in full;

3.3.2 Hello shall have no liability for maintenance of any websites hosted on third party servers if Hello is denied access to such servers;

3.3.3 if the Client amends any code used in a website designed and/or developed by Hello then Hello shall have no further liability for any bugs, viruses or errors in that code. Hello shall be entitled to make charges at its hourly rate for any work required to investigate and rectify such bugs, viruses and errors.

4 Charges and payment

4.1 With the exception of website work, the Charges for the Services shall be the fixed fee set out in Hello's quotation.

4.2 In the case of website work:

4.2.1 Hello's quotation represents a fixed fee for the design of the website. Any price given for other work shall initially only be an estimate;

4.2.2 Once the design work has been completed, Hello shall notify the Client of the fixed Charges for the website development work and any other work required. If the Client does not accept the new Charges it may terminate the Contract or may request further charges to the Specification. Hello shall be entitled to charge at its hourly rate for any work necessitated by such changes, including any time incurred in producing quotes, amending Specifications and any extra design work.

4.3 If Hello is required to carry out work outside the scope of the Specification, Charges shall apply which shall be calculated in accordance with Hello's standard daily fee rate. Such rate shall be specified in Hello's quotation.

4.4 Hello shall be entitled to charge the Client for any travel expenses incurred by the individuals whom Hello engages in connection with the Services. Hello shall also charge for any accommodation or subsistence costs incurred, provided the Client is notified of such costs in advance of their being incurred.

4.5 Invoices shall be submitted by Hello as follows:

4.5.1 30% of the quotation when the Client accepts Hello's quotation;

4.5.2 on a monthly basis in arrears based on the time incurred by

Hello in that month; and

4.5.3 any other unbilled amounts on completion of the Services.

4.6 The Client shall pay each invoice submitted by Hello within 30 days of the date of the invoice, in full and in cleared funds to a bank account nominated in writing by Hello. Time for payment shall be of the essence of the Contract.

4.7 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by Hello to the Client, the Client shall, on receipt of a valid VAT invoice from Hello, pay to Hello 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.

4.8 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Hello may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Hello to the Client.

5 Acceptance and change

5.1 Unless otherwise specifically agreed in writing, the Charges specified by Hello cover delivery of the Services and any Deliverables and up to two rounds of "snagging", during which the Client may require Hello to make minor changes, provided that such changes are within the scope of the Specification. If further work is required after that because the Services or Deliverables still do not comply with the Specification then no further Charges shall apply. If further work is required for any other reasons, Hello shall be entitled to charge at its hourly rate.

5.2 The Client will be asked to approve proofs, pull samples, specimens, sketches, photographs links or any representation whether partial or total of the finished article in whatever form may be submitted by Hello to the Client for approval. Such approval may be given in writing, by email or verbally. Once such approval has been given it shall be final and Hello shall not have further liability for any errors or inaccuracies in such materials.

5.3 If the Client wishes to make a change to the Specification, Hello shall notify the client of any changes to the Charges that would arise out of that change. Hello shall not be obliged to make any change, and shall be entitled to continue providing the existing Specification, until such revised Charges and Specification are agreed in writing.

6 Intellectual Property Rights

6.1 All Intellectual Property Rights in Specification and the Deliverables or arising out of or in connection with the Services shall be the property of Hello.

6.2 Unless otherwise agreed in writing, the Client shall have no ownership in, and shall not be entitled to use, any Intellectual Property Rights delivered as part of a pitch. Payment of the Pitch Fee covers Hello's time in preparing for the pitch and does not imply the grant of any Intellectual Property Rights to the Client.

6.3 Once the Client has settled all invoices raised by Hello in respect of the Services, Hello shall grant to the Client a worldwide, perpetual, royalty-free licence to use all Intellectual Property Rights arising out of the Services or subsisting in any Deliverables.

6.4 The Client acknowledges that its use of any third party's Intellectual Property Rights is conditional on Hello obtaining a written licence from the relevant licensor on such terms as will entitle Hello to license such rights to the Client.

6.5 Any website management system made available by Hello to the Client shall be licensed by Hello from a third party. Hello shall ensure that the Client is entitled to use such system, but for the avoidance of doubt the Client may not sublicense it, nor may the Client reverse-engineer it or use it in relation to any website which is not developed by Hello.

6.6 If the Client requires Hello to use certain specific materials or content, the Client shall indemnify Hello against any cost, claim, liability or damages (including professional fees) incurred by Hello arising out of any allegation by a third party that Hello's use of such materials or content infringes that third party's Intellectual Property Rights.

6.7 Unless agreed otherwise in the Specification, Hello may use any Intellectual Property Rights it has developed for the Client for its own promotional purposes.

7 Confidentiality

7.1 A party (receiving party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 7 shall survive termination of the Contract.

8 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

8.1 Nothing in these Terms shall limit or exclude Hello's liability for death or personal injury caused by its negligence, or for the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation, or for breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession), or for anything else which cannot be limited or excluded by law.

8.2 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

8.3 Subject to clause 8.1:

8.3.1 Hello shall 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, or any indirect or consequential loss arising under or in connection with the Contract; and

8.3.2 Hello'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, shall in no circumstances exceed the total Charges for the Services and Deliverables passing under this Contract.

8.4 This clause 8 shall survive termination of the Contract.

9 Termination

9.1 Hello may terminate the Contract by giving the Client notice, such notice to take effect:

9.1.1 30 days after service in the case of Clients who receive an ongoing service from Hello and whose invoices are marked "retainer";

9.1.2 7 days after notice in all other cases, in which case the Client may choose to either:

(a) receive a refund of all the Charges (and it will not receive a licence of any Intellectual Property Rights produced by Hello up to termination); OR

(b) be invoiced for the Charges pro rata to the amount of work performed up to termination, and to receive a licence of all Intellectual Property Rights produced by Hello up to termination on the terms of clause 6.3 including the right to complete the works itself or via a third party.

9.2 Without limiting its other rights or remedies, 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 30 days of that party being notified in writing to do so;

9.2.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

9.2.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

9.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

9.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

9.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

9.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

9.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

9.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

9.2.10 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.2 to clause 9.2.9 (inclusive);

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

9.2.12 the other party's financial position deteriorates to such an extent that in Hello's opinion the Client's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

9.2.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

9.3 Without limiting its other rights or remedies, Hello may suspend provision of the Services under the Contract or any other contract between the Client and Hello if the Client fails to pay any amount due under this Contract on the due date for payment or if the Client becomes subject to any of the events listed in clause 9.2.2 to clause 9.2.13, or Hello reasonably believes that the Client is about to become subject to any of them.

9.4 Without limiting its other rights or remedies, Hello may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.

10 Consequences of termination

10.1 On termination of the Contract for any reason:

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

10.1.2 the Client shall return all Deliverables which have not been fully paid for. If the Client fails to do so, then Hello 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 this Contract;

10.1.3 the accrued rights, remedies, obligations and liabilities of the parties at expiry or termination shall be unaffected, 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; and

10.1.4 clauses which expressly or by implication survive termination shall continue in full force and effect.

11 General

11.1 Assignment and other dealings. Hello may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its

obligations under the Contract to any third party or agent. The Client shall not, without the prior written consent of Hello, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

11.2 Force majeure. Hello shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Hello including strikes, lock-outs or other industrial disputes (whether involving the workforce of Hello 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 suppliers or subcontractors.

11.3 Notices.

11.3.1 Any notice or other communication given to a party in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or fax, but not email.

11.3.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.3.1; if sent by pre-paid first class post or other next working day delivery service, at 9am on the second Business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax but not email, one Business day after transmission.

11.4 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

11.5 Waiver. A waiver of any right under the Contract or law is only effective if it is in writing and shall 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 the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.6 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

11.7 Variation. Except as set out in these Terms, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Hello.

11.8 Governing law. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

12 Interpretation

12.1 Definitions. In these Terms, the following definitions apply:

1. **Charges:** the charges payable by the Client for the supply of the Services in accordance with clause 4.

2. **Contract:** the contract between Hello and the Client for the supply of Services in accordance with these Terms.

3. **Client:** the person or firm who purchases Services from Hello.

4. **Deliverables:** the deliverables referred to in the Specification to be produced by Hello for the Client.

5. **Hello:** Hello Communications Limited, a company registered in England and Wales with company number 4442413.

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 use 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 to 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.

7. **Pitch Fee:** a fee payable to Hello for its time in preparing a pitch to the Client, the amount of which will be agreed between Hello and the Client.

8. **Services:** the services, including the Deliverables, supplied by Hello to the Client as set out in the Specification.

9. **Specification:** the description or specification of the Services provided in writing by Hello to the Client.

10. **Terms:** these terms and conditions as amended from time to time in accordance with clause 11.8.

12.2 Construction. In these Terms, the following rules apply:

12.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

12.2.2 a reference to a party includes its successors or permitted assigns;

12.2.3 any phrase introduced by the terms 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; and

12.2.4 a reference to writing or written includes faxes but not e-mails.