

# Formation Media Limited – Terms & Conditions

## 1. INTERNET & GRAPHIC DESIGN DEFINITION OF TERMS

Formation -	Formation Media Limited
The Client -	The entity which enters into a contract with Formation.
Browser, Internet Browser, Web Browser -	The software with which websites can be viewed. Examples include Mozilla Firefox and Microsoft Internet Explorer
Domain Name -	The root address of a website, e.g. www.webaddress.com. All such names must be registered with the appropriate naming authority. A fee will apply for this service.
Downtime -	Time when the website is not accessible via the Internet. This may be because of a technical failure of the Host or because work is being carried out on the site.
Host -	The company on whose system the Website physically resides.
Link, Hyperlink -	A 'click able' link embedded on a web page which may take the form of a graphic or text.
Main Browsers -	A selection of the most widely-used web browsers used by Formation for the purposes of testing of the Work. These are currently defined as the software versions of Internet Explorer and Mozilla Firefox current on the date the contract is signed by the Client.
Search Engine -	A website which contains a directory of websites on the Internet enabling users to find websites by subject matter classification.
Site or Website -	A collection of web pages and associated code which forms an integrated presence.
The Work -	The subject matter of the contract between the Client and Formation.
Print -	Any printed media, whether it be lithographic or digitally produced, signage, vehicle or exhibition graphics.

## 2. FEES

- 2.1 Fee Payable  
A non-refundable deposit of 40% of the total Order is due immediately upon receipt of initial Purchase Order/Email Confirmation of Order. The remaining 60% shall become due when the work is completed to the reasonable satisfaction of the Client but subject to the terms of Clause 4.3 Approval of Work and Clause 4.4 Rejected Work hereof. Formation reserves the right not to begin the Work until the said deposit has been paid in full.
- 2.2 Maintenance Fees  
Website maintenance, if included in the Work, shall be on a monthly basis, with a minimum of £40.00 payable in any month where updating is necessary. Fees will be assessed on an hourly basis. No fee will be required in a month where no updating is necessary.
- 2.3 Payment Schedule  
Unless an alternative payment schedule has been referred to in the foregoing contract, the payment schedule defined in Clause 2.1 Fee Payable applies.

## 3. DISCLAIMERS

- 3.1 Third Parties  
Formation can take no responsibility for services provided by third parties through us or otherwise, including the Hosting of the Client's Website, although Formation will endeavour to ensure that Website downtime is kept to a minimum.
- 3.2 Maintenance and Correction of Errors  
Formation takes no responsibility for the functionality or maintenance (unless a maintenance contract is in place) of the Website after the Work has been completed. Errors (both technical and typographical) solely attributable to Formation will be corrected free of charge, but Formation reserves the right to charge a reasonable fee for correction of errors for which Formation is not responsible, including, but not limited to malicious modification of the Website by a third party and typographical errors contained in materials provided to Formation by the Client.
- 3.3 Extent of Work  
Installation on the Internet is limited to the uploading of all necessary files to the Host, and testing of functionality.
- 3.4 Consequential Loss  
Websites hosted by Formation will be backed up every 24 hours. Under no circumstances will Formation be responsible or liable for financial or other loss or damage caused by the failure or use or misuse of its software. Any website not hosted and/or managed under a Formation maintenance agreement is the responsibility of the Client. In this instance the Client should ensure that data on their website is regularly backed up and that a contingency plan is in place to minimise possible losses as a result of hardware or software failure.
- 3.5 Status and Duration of Offers  
Proposals and offers are valid for a period of one month from the date issued. Formation is not bound to honour offers that have expired. Offers are not legally binding until an acceptable timetable for the work has been agreed by both parties. This timetable must be agreed within the month that the offer is valid. If an acceptable timetable has not been approved by both parties within one month of the offer being made, the offer is deemed to have expired.
- 3.6 Search Engine Listings  
Formation will undertake reasonable measures to ensure that the Website is listed in Search Engine results, but this does not constitute a guarantee that the site will appear for any given position or rank for any given search term within a Search Engine's results, that a currently unlisted site will appear in the Search Engines' results, or that a currently listed Website will remain listed within the Search Engine results indefinitely. The Client accepts that it is Search Engines and not Formation who determine whom the Search Engines list and whom they will not. The Client further understands there is no guaranteed placement or rank on the Search Engines and that it is possible that a new website may never appear within Search Engine results at all. Formation does not control Search Engines' algorithms and the Client accepts that changes in Search Engine ranking and listings may occur daily, weekly or even hourly.
- 3.7 Formation Search Engine Optimisation Packages  
Formation does not guarantee page one google rankings on Formation selected keywords, within a designated time period. SEO packages, prices are based on difficulty of keyword competition achieving high page rank and coverage of campaign, local, regional or national. If page one ranks are achieved, Formation cannot guarantee indefinite page one position, without an appropriate SEO maintenance package being in place.

## 4. COMPLETION OF WORK AND PAYMENT

- 4.1 Completion of Work  
Formation warrants completing the Work in accordance with its Standard Terms and Conditions to the specifications previously agreed with the Client. Formation will not charge more than the amount previously agreed unless the Client has varied the specifications of the Work since the agreement. Formation will not undertake changes to the specifications of the Work which would increase the cost, without prior written authorisation from the Client. Where the Client has varied the specifications of the Work since the agreement, but does not authorise Formation to increase the cost accordingly, Formation reserves the right to terminate the contract and invoice the Client for any part or parts of the Work already completed. Where the Work is complete according to the original specifications, Formation will deem the contract complete and will invoice the Client in full.
- 4.2 Supply of Materials  
The Client is to supply all materials and information required for Formation to complete the Work in accordance with the agreed specification. Such materials may include, but are not limited to, photographs, written copy, logos and other printed materials. Where the Client's failure to supply such materials leads to a delay in completion of the work, Formation has the right to extend previously agreed deadlines for the completion of the Work. Such deadline extensions may take into account further unforeseen and/or predicted delays, and/or commitments to other projects such that the deadline extension added by Formation may exceed the delay caused by the Client. Where the Client's failure to supply materials prevents progress on the Work for more than 14 days, Formation reserves the right to invoice the Client for any part or parts of the Work already completed in accordance with Clause 4.5 Payment.
- 4.3 Approval of Work  
On completion of the Work, the Client will be notified (website development work, a live testing link will be sent) and have the opportunity to review. The Client should notify Formation, in writing, of any unsatisfactory points within 7 days of receipt of such notification. Any of the Work which has not been reported in writing to Formation as unsatisfactory within the 7 day review period will be deemed to have been approved including website development work. Once approved, or deemed approved, work cannot subsequently be rejected. Post the review period the client will have 28 days to supply any additional imagery and content and the contract will be deemed complete and the remaining payment under Clause 2.3 Payment Schedule will become due. The Contract will remain in effect until all obligations have been completed in terms of this Clause.
- 4.4 Rejected Work  
If the Client rejects the Work within the 7 day review period and will not approve subsequent Work performed by Formation to remedy any points reported by the Client as unsatisfactory, or Formation considers that the Client is unreasonable in his repeated rejection of the Work, the contract will be deemed to have expired and Formation can take any legal measures to recover both payment for the completed Work and reasonable expenses incurred in recovering payment.
- 4.5 Payment  
Formation will invoice the Client for the balancing payment in accordance with Clause 2.3 Payment Schedule hereof, which, in the absence of a written agreement to the contrary, becomes due for payment upon receipt of the invoice for completed goods/services. Formation reserves the right to charge interest on an overdue account at a rate of 1.5% per annum over the base rate from time to time of Barclays Bank (accruing on a daily basis and compounded monthly) and from the date of invoice until the date of actual payment whether before or after judgement but without prejudice to Formations other rights or remedies under these terms and conditions or otherwise.
- 4.6 Remedies for Overdue Payment  
If payment has not been received by the due date, Formation has the right to suspend ongoing work for Client, until such time that full payment of the outstanding balance has been received. If full payment has still not been received 21 days after the due date, Formation has the right to replace, modify or remove a Website and revoke the Client's licence of the Work until full payment has been received. By revoking the Client's licence of the Work or removing a Website from the Internet, Formation does not remove the Client's obligation to pay any outstanding monies owing.
5. INTELLECTUAL PROPERTY
- 5.1 Offers and Proposals  
Offers and proposals made by Formation to potential clients should be treated as trade secrets and remain the property of Formation. Such offers and proposals or the information contained within them must not be passed to third parties or publicly disseminated without prior written authorisation from Formation. This includes, but is not limited to, technical features, functionality, aspects of the design and pricing information.
- 5.2 Warranty by Client as to Ownership of Intellectual Property Rights  
The Client will obtain all the necessary permissions and authorities in respect of the use of all copy, graphic images, registered company logos, names and trademarks or any other material it supplies to Formation for inclusion on print or website(s). The conclusion of a contract between Formation and the Client shall be regarded as a guarantee by the Client to Formation that all such permissions and authorities have been obtained and that the inclusion of such material on the Website would not constitute a criminal offence or civil delict. By agreeing to these terms and conditions, the Client removes the legal responsibility of Formation and indemnifies the same from any claims or legal actions however related to the content of a Client's print or website.
- 5.3 Domain Name and Hosting  
Any Domain Name obtained will belong to the Client. The Client agrees to indemnify Formation, including any incidental costs, against any claims that a Domain Name applied for, or obtained, violates the intellectual property rights of a third party. The Client warrants that the domain name sought is not a trademark of a third party.
- 5.4 Licensing, Ownership of the Work  
Once Formation has received full payment of all outstanding invoices and the Work has been approved by the Client in accordance with Clause 4.3 hereof, the Client will be granted a licence to use the Website and its contents. Where full ownership of the Work is to be assigned to the Client upon completion, once Formation

- has received full payment of all outstanding invoices and the Work has been approved by the Client in accordance with Clause 4.3 hereof, the Client will be notified in writing that ownership of the Work has been transferred. In this case, Clause 5.7 and Clause 5.8 do not apply.
- 5.5 Software development and licencing  
Any software code written and developed by Formation shall remain the property of Formation. Formation grants the client express licence to use any software developed on their computers or website. By granting a licence to the client, Formation permits sole use of the software. It is forbidden for the client to distribute to third parties, reverse engineer, decompile, create derivative works, and the exploitation or unauthorised transfer of, any Formation intellectual property and trade secrets, to include any exposed methods or source code where provided, no licensed right of use shall exist, and any products created as a result shall be judged illegal by definition of all applicable law. Any sale or resale of intellectual property or created derivatives so obtained will be prosecuted to the fullest extent of all United Kingdom and international law.
- 5.6 Trade Secrets  
Any code that is not freely accessible to third parties and not in the public domain, and to which Formation or their suppliers own the copyright, may not be copied, published, distributed or passed to any third parties in any form without prior written consent from Formation. Unless previously agreed otherwise in writing, no modifications may be made by the Client or any third party to code to which Formation or their suppliers own the copyright. Formation acknowledges the intellectual property rights of the Client. Information passed in written form to Formation, and that the Client has indicated is confidential or a trade secret, will not be published or made available in any other way to third parties without the prior written consent of the Client.
- 5.7 Third Party Development  
The Client agrees that resale or distribution of the completed files is forbidden unless prior written agreement is made between the Client and the Formation.
- 5.8 Credits  
The Client agrees that Formation may include development credit(s) and/or link(s) displayed on the Client's web page, unless this is otherwise defined in the foregoing Specification of Work. These development credit(s) and/or link(s) may not be removed or modified, by the Client or by a Third Party authorised by the Client, without written authorisation from Formation.
6. RIGHTS AND RESPONSIBILITIES
- 6.1 Right to Terminate  
Formation reserves the right to refuse or break a contract without prior notice, if it is believed that the Client is acting illegally, or any supplied material is illegal.
- 6.2 Events Beyond the Control of Formation  
Formation will not be liable for breach of contract where that breach was due to software, hardware or electrical failure, natural events such as fire or other events beyond the control of Formation.
- 6.3 Supply and Pricing of Services  
Formation reserves the right to use whoever it feels appropriate at the time for third party software and services, without affecting existing contractual and pricing agreements. Formation reserves the right to alter its prices as necessary and without prior notice. Such changes will not affect existing contractual and pricing agreements.
- 6.4 Privacy Policy  
Formation and any third party associates shall use information provided by the Client in relation to this agreement in accordance with the Data Protection Act 1998 and also to identify the Client in communications with them.
- 6.5 Non-disclosure  
Formation and any third party associates agree that, except if directed by the Client, it will not at any time during or after the term of this agreement disclose any confidential information. Likewise, the Client agrees that it will not convey any confidential information about Formation to another party. Both parties agree to define in writing prior to disclosure which information should be considered confidential and subject to this clause.
- 6.6 Indemnification  
Client agrees to use all and any of Formation's services and facilities at their own risk and agree to defend, indemnify, save and hold Formation harmless from any and all demands, liabilities, costs, losses and claims including but not limited to solicitor's fees against Formation or its associates that may arise directly or indirectly from any service provided or agreed to be provided or any product or service sold by the Client or its third parties. Client agrees this indemnification extends to all aspects of the project, including but not limited to website content and choice of domain name. Client also agrees to defend, indemnify and hold harmless Formation against any liabilities arising out of injury to person or property caused by any service provided or agreed to be provided or any product or service sold by the Client or third parties, including but not limited to, infringement of copyright, infringement of proprietary rights, misformation, delivery of defective products or services which is harmful to any person, business, company or organisation.
7. ARTWORK & GRAPHIC DESIGN
- 7.1 Proof reading  
It is the client's responsibility to scrutinise artwork thoroughly when presented as a proof, this includes spelling, grammar and layout. Artwork corrections and amendments must be clearly indicated on the proof supplied, and if necessary a further proof(s) will be submitted until approval to proceed is gained. Formation can not be held responsible for any changes, alterations or omissions not made on proofs supplied.
- 7.2 Artwork approval  
All artwork must be signed off when approved either on hard copy supplied and returned to Formation or via email. Formation company policy states that verbal approval of artwork is not acceptable and said artwork will not be proceeded with until written confirmation is received.
- 7.3 Artwork to disk  
As long as the clients account is fully up to date, with no monies owing to Formation, on request Formation will copy the artwork to disk. Each disk will be charged at £50.00, this cost is to cover studio time for retrieval and administration.
- 7.4 Copyright and ownership  
All ideas, designs, concepts, artwork, compositions, symbols, logos or other trade indicia prepared or developed by Formation shall be the absolute property of Formation until full payment is received. Once we have received full payment, all final published artwork becomes the ownership

- of the client excluding fonts and other items that may have been sourced from a third party including stock photography. Formation reserves the right to use these designs for promotional material and for tenders for new work. Development stages remain the property of Formation after the completion of the project, the client only has copyright to the final publish artwork. Formation will never knowingly copy another designers or companies artwork.
8. INTERPRETATION
- 8.1 Jurisdiction  
This Agreement shall be governed by the laws of the England and Wales which shall claim venue and jurisdiction for any legal action or claim arising from the contract between Formation and the Client. The said contract is void where prohibited by law.
- 8.2 Survival of Contract  
Where one or more terms of the said contract are held to be void or unenforceable for whatever reason, any other terms of the contract not so held will remain valid and enforceable at law.
- 8.3 Change of Terms and Conditions  
These terms and conditions may change from time to time. Where a contract exists, the Client will be informed of revisions as and when they are issued.
- 8.4 Termination of Contract  
Formation reserves the right to terminate a project with a Client at any time without prior notification if it finds the Client in breach of these Terms and Conditions. Formation shall be the sole arbiter in deciding what constitutes a breach. No refunds are given in such a situation.
9. LIABILITY AND WARRANTY DISCLAIMER  
Formation provides print and websites and the contents thereof on an "as is" basis and makes no warranties with regard to the print and website and their contents, or fitness of services offered for a particular purpose. Formation cannot guarantee the functionality or operations of a website or that it will be uninterrupted or error free, nor does it warrant that the contents are current, accurate or complete.  
Formation endeavours to provide print and websites within given delivery time scales to the best of its ability. However, the Client agrees that Formation is not liable for any claims, losses, costs incurred or compensation due to any failure to carry out services within a given delivery time scale. Formation, at its sole discretion, may offer a full or partial refund and/or additional services in light of any failure to carry out services within a given delivery time scale in accordance with Clause 4.2 Supply of Materials.  
The Client agrees Formation is not liable for absence of service as a result of illness or holiday time. Formation reserves the right to assign the work to a third party associate should there be the need to.  
The Client agrees Formation is not liable for any failure to carry out services for reasons beyond it's control including but not limited to acts of God, telecommunication problems, software failure, hardware failure, third party interference, Government, emergency on major scale or any social disturbance of extreme nature such as industrial strike, riot, terrorism and war or any act or omission of any third party services.  
Formation is not liable for any consequences or financial losses such as, but not limited to, loss of business, profit, revenue, contract, data or potential savings, relating to services provided.  
Should Client goes into compulsory or involuntary liquidation or cannot pay its debts in the normal course of business, Formation reserves the right to cancel forthwith any projects and invoice Client for any work completed.  
Websites  
On handover of files from Formation to Client, the Client shall assume entire responsibility in ensuring that all files are functioning correctly before use.  
Whilst every effort is made to make sure files are error free, Formation cannot guarantee that the display or functionality of the Work will be uninterrupted or error free. Formation will endeavour to make sure that display and functionality of the Work is error free in the Main Browsers before handover of the completed Work. If after handover of files errors are found in code the Formation has created using the Main Browsers, domain name setup and hosting setup are the same as when work began, then Formation will correct these errors for the Client free of charge.  
If after handover of files errors are found in code the Formation has created, where an updated software version of one or all of the Main Browsers exists, or the domain name setup or hosting setup has been changed, Formation reserves the right to quote separately for any additional work needed as a result of changes to the browser software, domain name setup or hosting setup.  
Formation shall have no liability to the Client or any third parties for any damages, including but not limited to, claims, losses, lost profits, lost savings, or other incidental, consequential, or special damages arising out of the operation of or inability to operate these web pages or website, even if Formation has been advised of the possibility of such damages.  
There are sometimes laws and taxes which affect the Internet. Client agrees that it is their responsibility to comply with such laws and will hold harmless, protect, and defend Formation and its subcontractors from any claim, suit, penalty, tax, or tariff arising from the Client's exercise of Internet e-commerce.  
Formation may from time to time recommend to the Client that updates are needed to their website to comply with, including but not limited to, new legislations, software releases and web standards. Formation reserves the right to quote for any updates as separate work. Client agrees Formation is not liable for any failure to inform or implement these updates to their site. Client agrees that it shall defend, indemnify, save and hold Formation harmless from any and all demands, liabilities, costs, losses and claims arising from omission to inform or implement these updates.  
The acceptance of a quotation and/or written approval to proceed with works will deem the client to be bound by these standard terms & conditions and website contract which can be viewed from Formation's website.
10. ACCEPTANCE OF TERMS AND CONDITIONS  
By accepting a quotation or making a payment of invoice to use the services supplied, the Client acknowledges to have read, understood, and accepted the Terms and Conditions of this Agreement, and agrees to be legally binding by these Terms and Conditions.