

# BETLEY WHITEHORNE IMAGE TERMS AND CONDITIONS

## 1. Definitions

In these Terms & Conditions, the following words and expressions shall have the following meanings:

"BWI" or "Betley Whitehorne Image" shall mean Betley & Whitehorne Advertising (Guernsey) Limited, a Guernsey registered Company that is limited in liability, and whose registered office is 55 Le Bordage, St Peter Port, Guernsey GY1 1BP

"Client" shall mean the Client (or any person acting on behalf of and with authority of the Client) as described on any quotation, work authorisation or other form as provided by BWI to the Client;

"Charges" - the charges payable by the Client as set out in the invoice for Goods supplied, or quotation, as provided by BWI to the Client;

"Intellectual Property Rights" - all intellectual property rights whether registered or unregistered, including (without limitation) confidential information, know how, copyright and trade marks but not including source code;

"Other Products" - other products set out in the Client request documentation;

"Printed Products" - printed products set out in the Client request documentation;

"Products" - Website, Printed Products and Other Products set out in the Client request documentation;

"Request documentation" - details of requested work as provided by the Client via email, letter or other written form;

"Services" - creating the Products;

"Software" - software used for the operation of the Website;

"Third Party Materials" - any image, text or other material that is owned by a third party and used in the creation of the Products;

"Website" - graphical, technical and navigational design as set out in the Client request documentation as amended and updated from time to time by prior mutual agreement in writing;

## 2. Supply of Services

BWI shall supply the Services and create the Products in consideration for the Charges.

## 3. Acceptance of Website

3.1 In the event that the Client identifies a defect which is caused by the error or omission of BWI then BWI shall use best endeavours to correct such defect so that the Website is in accordance with any milestone including the finished product set out in the Client request documentation.

3.2 The Client shall have two working days from the date of delivery of the finished product Website to satisfy itself that it conforms to the estimate provided that in any event the Client shall be deemed to have accepted the Website if any part thereof is put into live use.

## 4. Acceptance of Printed Products

4.1 The Client acknowledges and agrees that the images and/or colours of any Printed Product may differ from any sample proof delivered on any media and for the avoidance of doubt any sample supplied shall not constitute a sale by sample.

4.2 Subject to clause 4.1, the Client shall have two working days from the date of delivery of the final Printed Product to satisfy itself that it conforms to the Printed Product requested provided that in any event the Client shall be deemed to have accepted the Printed Products if any part thereof is sold or used in any way.

4.3 Subject to clause 4.1, BWI shall use reasonable endeavours to correct any defects in the Printed Products.

4.4 The Client acknowledges and agrees that BWI may supply to the Client a final amount of Printed Products that is ten percent over or under the actual number ordered and that the Client shall pay for any excess.

## 5. Acceptance of Other Products

Acceptance of Other Products shall be deemed to occur at the time of delivery.

## 6. Charges

6.1 BWI shall invoice the Client at the end of each job/project, or as otherwise agreed, for the amount of the Charges incurred relating to that project/job and the Client shall pay the amount of the Charges invoiced within 30 days of receipt of such invoice.

6.2 The Client acknowledges and agrees that estimates given may be subject to change and that a balancing payment(s) may be required to pay the Charges in full.

6.3 BWI shall have the right to suspend and/or terminate the performance of any of its obligations under this Agreement in the event of any non-payment by the Client or breach of the Client's obligations pursuant to clause 8.

6.4 BWI shall have the right to charge interest on overdue monthly instalments at the rate of 3% per year above the base rate of the Bank of England calculated from the date when the monthly instalment becomes due for payment up to and including the date of actual payment, whether before or after judgment.

## 7. Third Party Materials

BWI shall notify the Client of any Third Party Materials that it intends to use in the Products and the Client acknowledges and accepts that the Third Party Products shall be supplied to the Client in accordance with the respective copyright licensor's terms.



## 8. Client Responsibilities

8.1 The Client acknowledges that BWI's ability to provide the Services is dependent upon the full and timely co-operation of the Client (which the Client agrees to provide) as well as the accuracy and completeness of any information and data the Client provides to BWI.

8.2 The Client warrants that it owns all Intellectual Property Rights in all materials that it supplies to BWI for the provision of the Services and use in the Products.

8.3 The Client acknowledges and accepts that it takes full responsibility and accepts all liability for the use of and any registration (save for initial domain name registration if requested pursuant to clause 14) and upkeep thereof of any name or logo that BWI uses or develops as part of the Services and Products (whether at the request of the client or otherwise) including (without limitation) any claim by any third party for infringement of Intellectual Property Rights.

## 9. Intellectual Property Rights

9.1 BWI warrants that to the best of its knowledge and belief that Intellectual Property Rights (other than Third Party Products or materials supplied by the Client) in the Products are original to BWI provided that BWI cannot be, and is not, responsible for compliance of the Intellectual Property Rights with laws of all jurisdictions of the world. It is the Client's responsibility to satisfy itself of such compliance.

9.2 In consideration of and subject to receipt of the Charges in cleared funds in full BWI grants to the Client a non-exclusive non assignable licence of the Intellectual Property Rights in the Products owned by BWI and the object code version of the Software provided always that BWI reserves the right to veto any use outside the scope of this licence (including any purported sub-licensing, on-selling or assigning) and the Client shall not reverse engineer or decompile the Software save as permitted by law.

9.3 BWI asserts its moral rights in the Products and the Client confirms that it shall not alter, reuse or otherwise exploit or jeopardise the artistic integrity of the Products without BWI's prior written consent.

## 10. Limitation of Liability

10.1 The following provisions set out the entire financial liability of BWI (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

10.1.1 any breach of this Agreement; and

10.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.

10.2 All warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from this Agreement.

10.3 Nothing in this Agreement excludes or limits the liability of BWI for death or personal injury caused by BWI's negligence or fraudulent misrepresentation.

10.4 Subject to Clauses 10.2 and 10.3

10.4.1 BWI shall not be liable to the Client for any indirect or consequential loss or damage (whether for

loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Agreement; and

10.4.2 BWI's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with this Agreement shall be limited to the amount actually received by BWI pursuant to the terms of this Agreement.

## 11. Indemnity

The Client agrees that it shall indemnify and keep indemnified BWI against all claims, demands, losses, damage, costs or expenses incurred by BWI as a result of a breach by the Client of any provision of this Agreement, law or regulation and as a result of any third party legal action or threatened action in relation to Intellectual Property Rights infringement whatsoever and howsoever arising.

## 12. Guarantee

12.1 In consideration of BWI entering into this Agreement the Guarantor, at the request of the Client, hereby unconditionally guarantees to BWI as primary obligor the due and punctual performance and observance by the Client of all the Client's obligations and the punctual discharge by the Client of all the Client's liabilities to BWI contained in or arising under this Agreement.

12.2 If the Client shall make default in the payment when due of any amount payable to BWI under this Agreement, the Guarantor shall forthwith on demand by BWI unconditionally pay to BWI an amount equal to the amount payable by the Client.

12.3 As an independent and primary obligation, without prejudice to clause 12.1 the Guarantor hereby irrevocably agrees that it shall indemnify and keep indemnified BWI against all claims, losses, damage, costs or expenses that BWI incurs arising from failure by the Client to comply with the indemnity given in clause 11.

12.4 The Guarantor shall not be exonerated or discharged nor shall its liability be affected by any forbearance, whether as to payment, time, performance or otherwise howsoever, or by any other indulgence being given to the Client.

## 13. Non Solicitation

13.1 The Client agrees and undertakes that for the duration of this Agreement and the period of one year after the termination of this Agreement it (or any Client group company or related person) shall not directly or indirectly approach, use the Services of or employ any BWI employee or former employee with whom it has come into contact in connection with this Agreement in any regard.

13.2 The Client agrees and undertakes that if it (or any Client group company or related person) acts in breach of clause 13.1 or without BWI's prior written consent then (without limitation to any other remedy available to BWI) the Client shall pay an introduction fee amounting to the amount paid to the employee for the last two years of his or her employment.



#### **14. Domain Name**

The Client hereby appoints BWI as its agent and BWI hereby agrees to act as the Client's agent solely in relation to obtaining any domain name for and on behalf of the Client and in the Client's name subject always to the Client being bound by Nominet's or any such other provider's terms and conditions and provided always that any such purchase is subject to availability and the Client agrees and acknowledges that it shall await confirmation or otherwise from the Client.

#### **15. Source Code**

BWI shall have no obligation to provide any source code to the Client. In the event that the Client wishes to enter into hosting and maintenance Agreements with a third party then the Client acknowledges that BWI has no ongoing obligation to provide any support or maintenance of any form.

#### **16. Web Hosting**

If the Client selects to organise their own web hosting arrangements, final exported sites will be uploaded to your preferred host company or supplied on disc as per the quoted price. Construction files of the site can be supplied on request and at BWI's sole discretion may incur a fee. BWI accepts no responsibility for down times, delays, breakdowns or data loss caused by Internet Service Providers.

#### **17. Advertising**

17.1 The Client hereby grants to BWI an irrevocable licence to use its name and any of the Products as part of its advertising and in BWI's portfolio.

17.2 The Client agrees and undertakes to display on pages of the website the following wording "this site was designed by BWI" or words to similar effect.

#### **18. Variation**

No variation of this Agreement (including without limitation the Client request documentation) shall be effective unless it is in writing and refers specifically to this Agreement and is duly executed by each party.

#### **19. Waiver**

The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.

#### **20. Notices**

Any notice to be given hereunder shall be hand delivered or sent by registered post to the address of the other party set out in the Client request documentation (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by registered post) upon the expiration of forty-eight (48) hours after posting.

#### **21. Invalidity and Severability**

If any provision of this Agreement shall be found by any Court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

#### **22. Entire Agreement**

BWI shall not be liable to the Client for loss arising from or in connection with any representations agreements statements or undertakings made prior to the date of execution of this Agreement other than those expressly incorporated in this Agreement.

#### **23. Assignment/Sub-contractor**

23.1 BWI shall have the right to assign this Agreement or all or any of its rights and obligations hereunder at its sole and absolute discretion.

23.2 The Client shall not be entitled to assign this Agreement or all or any of its rights and obligations hereunder without the prior written consent of BWI.

23.3 BWI may sub-contract the performance of any of its obligations under this Agreement.

#### **24. Relationships of Parties**

Nothing in this Agreement shall create or be deemed to create a partnership, or the relationship of employer and employee between the parties.

#### **25. VAT/GST**

Save insofar as otherwise expressly provided all amounts stated in this Agreement are expressed exclusive of any VAT, sales tax and/or customs or excise duty.

#### **26. No Rights of Third Parties**

The Parties to this contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999.

#### **27. Governing Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the law of the Bailiwick of Guernsey and the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the Courts of Guernsey.

