

APB Web Communications LLP Trading As: Zephi
Terms and Conditions

1. Definitions

- 1.1 In these Conditions, the following words and expressions shall have the meaning set out below:
‘**Agreement**’ means these Conditions read in conjunction with the Specification and Letter of Engagement
‘**Client**’ means the individual or business named on the Specification attached.
‘**Zephi**’ is a trading name of APB Web Communications LLP (Company No: OC403992)
‘**Project**’ means described by the Specification and governed by this Agreement.
‘**Specification**’ means the Project details in or annexed to “the Letter of Engagement”.
- 1.2 The construction, validity and performance of these Conditions and this order shall be governed by the laws of England and Wales.
- 1.3 All services provided by Zephi to the Client shall be governed by these Conditions notwithstanding other terms stipulated at the point of order.
- 1.4 If there is any conflict between these Conditions and any other agreement made between Zephi and the Client, these Conditions shall prevail.

2. Project Acceptance and Development

- 2.1 Prices stated in the Letter of Engagement provided by Zephi are valid for 30 days of the date specified in the Specification. Zephi reserve the right to withdraw the terms prior to acceptance by the Client.
- 2.2 Terms will not be deemed accepted until Zephi receive the Letter of Engagement and the Specification signed by the Client.
- 2.3 Subject to payment of the Fees and the provision of client content by the Client, Zephi agrees to design and implement the Project using reasonable endeavours and in accordance with the Specification, the Letter of Engagement and the other provisions of this Agreement.
- 2.4 Zephi shall notify the Client when the Project or any agreed part is available for approval or acceptance testing. The Client shall advise Zephi of any errors in that version of the Project within 20 working days of notification by e-mail or postal mail. Zephi will use reasonable endeavours to correct such errors.
- 2.5 If the Client notifies Zephi of any amendments to the original specification, the provisions of clause 3 shall apply.
- 2.6 If the Client does not notify Zephi of any errors within 20 working days of the Project being available for acceptance testing, the Project will be deemed to have been completed to a satisfactory standard and payment will be due in accordance with clause 5.
- 2.7 Zephi reserves the right to assign subcontractors to complete part or the whole of the Project.

3. Amendments to Specification

- 3.1 Any amendments to the Specification must be sent to Zephi by the Client in writing by e-mail or postal mail. Zephi will assess the amendments required and discuss with the client an amended Specification.
- 3.2 Zephi reserves the right to charge for any additional work and will provide the Client with an additional quotation as part of the amended Specification. Zephi also reserve the right to request payment for amendments to the original Specification before continuing work.
- 3.3 The Client will be required to agree the amended Specification in writing by email or postal mail before work on the amendments can commence.
- 3.4 If the Client does not return the signed amended Specification to Zephi within 20 working days, the Client shall be deemed not to require such amendments and the Project shall be deemed complete with payment due in accordance with clause 5.

4. Client Obligations

- The Client agrees:
- 4.1 Zephi will not be liable for the Client’s failure to comply with any laws or taxes affecting e-commerce.
- 4.2 the resale or distribution of the Project in full or part is forbidden unless prior written agreement is made between the Client and Zephi.
- 4.3 Zephi may include developmental credits and links within any code, designs, builds or amends.
- 4.4 Zephi may include any work done for the Client within their portfolio of work
- 4.5 to provide any information or content required by Zephi promptly. Failure to provide required information or content within 20 working days of request will result in payment being due for the work done in accordance with clause 5 and Zephi will not be liable for any failure to subsequently meet targeted dates for completion of any related task.
- 4.6 if a problem with the design or code arises which does not allow the original Specification to be met, Zephi may apply the nearest available alternative solution
- 4.7 to keep all passwords confidential at all times
- 4.8 they are responsible for providing and maintaining suitable equipment telecommunications and support services to facilitate access to the Project
- 4.9 if a choice of design is presented by the Client, only one solution is deemed to be given by Zephi as fulfilling the Project.

5. **Payment**

- 5.1 The Client shall pay a deposit as requested by Zephi in the Letter of Engagement. Zephi will not commence any work on the Project until deposit monies are received by Zephi.
- 5.2 The balance of the price shall become due at the completion of the Project (or deemed completion in accordance with clauses 2 or 3).
- 5.3 All invoices must be settled within 30 days of the invoice date. Payment may be made by cheque (made payable to APB Web Communications) or bank transfer.
- 5.4
- 5.5 Returned cheques will incur an additional fee of £50 per returned cheque. Zephi reserves the right to consider an account in default in the event of a returned cheque.

6. **Outstanding Payments**

- 6.1 Zephi reserves the right to refuse to undertake any further work for the Client if an invoice remains outstanding.
- 6.2 Zephi reserves the right to remove any work done for a Project from any computer systems and the internet if invoice payments are not received within 30 days of the invoice date.
- 6.3 If payment is not received within 30 days of the invoice date, interest will be charged at 8% above the base rate of the Bank of England and will continue to be charged on a daily basis until payment is received in full.
- 6.4 Zephi's removal of Project material does not relieve the Client of its obligation to pay the due amount. Clients whose accounts are in default agree to pay APB Web Communications LLP reasonable legal expenses and third party collection agency fees in the enforcement of these Conditions.

7. **Warranties**

- 7.1 The Client warrants that it has the authority to enter into and perform this Agreement and has not entered into any other agreement which conflicts with this Agreement or inhibits, restricts or impairs its ability to perform its obligations under this Agreement.
- 7.2 The Client warrants that it has obtained and will maintain all necessary licences, authorisations and consents which are necessary for the Project, content and domain name.

8. **Copyright and Ownership**

- 8.1 Title and copyright to the website graphics, general artwork, commissioned artwork, illustrations, website design, programming, copy site content, coding and other work created in the Project shall not pass to the Client but shall remain the property of Zephi and used on licence by the Client unless negotiated and agreed in writing.
- 8.2 Data which is gathered as a consequence of the operation of the website shall belong to and be the responsibility of the Client.
- 8.3 Where the Client terminates the Project before completion, all work done towards the Project remains in the Ownership of Zephi.
- 8.4 Publication and/or release of the graphic design within the Project may not take place before cleared funds have been received by APB Web Communications LLP
- 8.5 The Client may request, in writing, Zephi's permission to use Project material (for which Zephi hold the copyright) in forms other than for which it was originally supplied. Zephi may, in its absolute discretion, grant this and may charge for the provision of the same.
- 8.6 If the client supplies material to Zephi, it is the responsibility of the client to obtain all necessary copyrights for its use and Zephi will assume this has been done. In this situation, the copyright shall be retained by the client.
- 8.7 Should the Client supply material to Zephi believing it to be copyright and royalty free, which subsequently emerges to have copyright and royalty limitations, the Client agrees to permit Zephi to remove and/or replace the file at the Client's expense to be assessed on a quantum meruit basis. In this situation, the client indemnifies Zephi from any claim which arises regarding the use of material supplied to Zephi.
- 8.8 The Client agrees that Zephi hold no responsibility for any amendments made by a third party before or after a design is published.
- 8.9 Zephi reserves the right to use any artwork or printing they produce for the purposes of promoting their services.

9. **Term**

- 9.1 This Agreement shall commence upon the date of signature on the Letter of Engagement and shall continue until receipt of invoice payment, unless terminated in accordance with clause 14.
- 9.2 Termination shall be without prejudice to any rights acquired by the parties during the term of the contract.

10. **Indemnities**

- 10.1 The Client agrees to keep Zephi fully indemnified on demand against any liability, damage, expense, claim or cost (including legal costs and expenses) suffered by Zephi as a result of the Client's breach of any clause of this Agreement
- 10.2 The Client agrees that Zephi is not liable for any claims, losses, costs incurred or damages due to any failure to carry out services within a given delivery timescale.
- 10.3 The Client agrees that Zephi is not liable for absence of service as a result of illness or holiday.
- 10.4 The Client agrees that Zephi shall not be liable for the website content, hosting and choice of domain name.
- 10.5 The Client agrees that Zephi shall not be liable for any infringement of copyright or proprietary rights,

- 10.6 The Client will indemnify Zephi in relation to any liability arising in respect of the matters at 10.2, 10.4 and 10.5.
- 11. Limitation of Liability**
- 11.1 Notwithstanding anything contained in these Conditions or the Specification, Zephi's liability to the Client in respect of the Project, in contract, tort (including negligence or breach of statutory duty) or howsoever otherwise arising, shall be limited to the price for the Project specified in the Letter of Engagement.
- 11.2 Notwithstanding anything contained in these Conditions or the Specification, in no circumstances shall Zephi be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof (i) for any loss of profit, business, contracts, revenues or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever.
- 12. Force Majeure**
- 12.1 Zephi shall not be under any liability for any failure to perform any of its obligations under the order due to 'Force Majeure'. Following notification by Zephi to the Client of such cause, Zephi shall be allowed a reasonable extension of time for the performance of its obligations.
- 12.2 For the purposes of this condition, 'Force Majeure' means fire, explosion, flood, lightning, Act of God, act of terrorism, war, rebellion, riot, sabotage, telecommunication problems, software failure, hardware failure, third party interference, official strike or similar official labour dispute, or events or circumstances outside the reasonable control of the party affected thereby.
- 13. Confidentiality and Data**
- 13.1 The Client is responsible for keeping the password and username that may be assigned on registration confidential. The Client is fully responsible for all action and activities that take place under the Client account.
- 13.2 If the Client believes there has been unauthorised use of the account or suspects that confidentiality has been compromised, the Client must contact Zephi immediately.
- 13.3 In the event of termination or expiration of this Agreement, each party shall return or, if requested, destroy the confidential information of that party.
- 13.4 Each party will comply with its obligations pursuant to the Data Protection Act 1998.
- 13.5 Zephi and any third party associates agree that it will not disclose any confidential information relating to the Client without the Client's express permission.
- 13.6 The Client agrees that it will not disclose any confidential information relating to Zephi.
- 13.7 Zephi shall use information provided by the Client: (a) to identify the Client in communication by phone, email, postal mail or Skype; and
- (b) to contact the Client from time to time to offer them services or products which may be of interest to or benefit the Client.
- 14. Termination**
- 14.1 The Client may request in writing that Zephi cancel a Project. Zephi will only accept this request for termination if work on the Project has not yet begun. If work has already begun on the Project, Zephi will invoice the Client for the work carried out.
- 14.2 Zephi reserves the right not to work with any Client who has a site which it deems is unlawful or inappropriate, contains a virus or hostile program, constitutes harassment, racism, violence, obscenity, harmful intent, spamming, contains adult content, commits a criminal offence, infringes privacy or copyright or any other questionable media at its own discretion.
- 14.3 Zephi reserves the right without notice to cancel, reject, refuse sale to or work with a Client without reason for such rejection or refusal.
- 14.4 Zephi reserve the right to cancel the Client's email access:
- (a) if Zephi receive excessive spam complaints about the Client
- (b) it is suspected the Client is using the email account to send spam
- (c) Zephi suspect the Client is using the service to send pornographic, offensive or inappropriate material
- (d) Invoice payment is not made in accordance with these terms.
- 14.5 Should the Client go into compulsory or involuntary liquidation or cannot pay its debts in the normal course of business, Zephi reserves the right terminate the Project.
- 14.6 Zephi reserves the right to terminate a Project with the Client at any time without prior notification if it deems the Client to be in breach of these Conditions. Zephi shall be the sole arbiter in deciding what constitutes a breach. The Client shall not be entitled to refunds of any payments made to Zephi.
- 14.7 If the Project is terminated by either party then Zephi will be entitled to payment for work done to that date. The invoice for such work must be paid by the Client within 30 days of receipt failing which Zephi shall be entitled to payment of the full price of the Project forthwith.
- 15. Web Design and Development**
- 15.1 the website design may be used on **one** domain name only. The Client is not permitted to use a design for more than one website without prior written agreement from Zephi.
- 15.2 Zephi cannot guarantee correct functionality with all browser software across all different operating systems. However, Zephi shall endeavour all websites to function with Internet Explorer, Mozilla Firefox and Google Chrome latest releases.
- 15.3 The Client agrees that all websites will be hosted by Zephi unless otherwise agreed in the Specification.
- 15.4 Zephi may from time to time recommend to the Client that updates are needed to their website to comply with, but not limited to, the following: new legislation, software releases and web standards. Zephi reserve

- the right to charge for these updates as additional work.
- 15.5 The Client agrees that no liability will be attributable to Zephi in the event of website downtime or the inability to operate the web pages or website
- 15.6 Should the Client supply material to Zephi believing it to be copyright and royalty free, which subsequently emerges to have copyright and royalty limitations, the Client agrees to permit Zephi to remove and/or replace the file at the Client's expense to be assessed on a quantum meruit basis.
16. **Hosting, Maintenance and Support**
Any website containing creative or functional input by Zephi shall be hosted, maintained and supported by Zephi and:-
- 16.1 The Client agrees that Zephi is not liable for any bugs, performance issues or failure of their code.
- 16.2 The Client agrees that no liability will be attributable to Zephi in the event of website downtime or the inability to operate the web pages or website
- 16.3 The Client agrees that Zephi or its agents will not be liable if they fail to register such domain names as requested by the Client.
Zephi and its agents will use its reasonable endeavours to ensure such registration.
- 16.4 Zephi will quote for any work involved in changing the website design or website code in order for it to work with updated browser software, domain name or hosting changes
- 16.5 A hosting invoice will be raised for each website 11 months after the initial commencement of the hosting. Hosting invoices will then be raised on an annual basis.
17. **Search Marketing**
- 17.1 No warranty is provided by Zephi in relation to the performance of third parties engaged to perform part of the Project and Zephi shall not be liable for any failure, action, omission or error on the part of a third party provider.
- 17.2 The Client agrees that Zephi is unable to guarantee that the Client's website will achieve a favourable position, or any position, within a particular search engine and as such, shall not be liable for failure to achieve a particular position.
- 17.3 The Client agrees that Zephi shall not be liable for any website URLs dropped or excluded by a search engine for any reason.
- 17.4 The Client agrees that Zephi do not warrant or represent that search engine results reported will be correct, accurate, timely, reliable or otherwise due to their reliability on third party software.
18. **Relationship**
- 18.1 Nothing in this Agreement shall be deemed to create a partnership or joint venture or contract of employment of any kind between the parties.
19. **Entire Agreement**
Each party agrees that this Agreement sets out the entire agreement between the parties and supersedes all previous agreements.
20. **Waiver**
The failure by Zephi to enforce any of these Conditions at any time or for any period will not release or exonerate or in any way affect the liability of the Client or be a waiver of:
- 20.1 these Conditions.
- 20.2 the right of Zephi at any time afterwards to enforce each and every clause of these Conditions; or
- 20.3 any penalty attached to their performance.
21. **Severance**
If any provision of this agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this agreement and rendered ineffective as far as possible without modifying the remaining provisions of this agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of this agreement.
22. **Time of the Essence**
Throughout the Project, time shall not be of the essence, except where it is expressly stated to apply.
23. **Rights of Third Parties**
Pursuant to s 1(2)(a) of the Contracts (Rights of Third Parties) Act 1999 the parties intend that no term of this agreement may be enforced by any person who is not a party to this agreement
24. **Assignment**
This Agreement shall be binding upon the parties and their respective successors and permitted assignees, and references to a party in this agreement shall include its successors and permitted assignees.
25. **Governing Law**
This Agreement shall be governed by and interpreted in accordance with English law and the English courts shall have jurisdiction to resolve any disputes between the parties.