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## 1 Governing Law

- 1.1 This Agreement will be governed by and construed in its entirety in accordance with the internal laws of the jurisdictions from the canton of Luzern, Switzerland. Any dispute arising out of or related to this Agreement, which cannot be resolved by negotiation, shall be settled by binding arbitration in accordance with and subject to the arbitration laws of the Canton of Luzern, Switzerland.

## 2 Fees

- 2.1 Unless otherwise stated in the quotation, fees and expenses quoted are exclusive of VAT.
- 2.2 We work on an 8 hours per day basis.
- 2.3 Fixed fees quoted for agreed programs and retainers will be invoiced in advance. Fees based on actual time expended will be invoiced monthly in arrears.
- 2.4 Where arrangements are made for a third party to supply services (such as print or hosting), whether as a sub-contractor or directly for the Client's account, a commission may be taken.
- 2.5 Invoices are due to be paid in full up to 30 days latest from date of issue. Invoices unpaid 40 days after the date of issue will receive a second notice. The overdue accrued and unpaid amounts to be paid hereunder shall entail a late fee of CHF 50.00 processing and an interest rate equal to 5% of the invoice amount according to applicable Swiss law (Art. 104 Abs. 1 OR), which shall continue to accrue at a rate of 5% monthly from the date such amount is due hereunder through and including the date of actual payment in full.
- 2.6 If the program changes materially from the agreed scope, or unforeseeable work beyond that agreed arises, additional fees may become payable but will be notified in advance. Any follow-up work not in the agreed program will be charged as it arises on an hourly basis at standard rates.
- 2.7 Our ability to complete certain scheduled deliverables is heavily if not solely reliant on the Clients approval or feedback and (but not limited

to) delivering content and assets. Additional fees may be charged where the Client, is late in delivering content, assets, approval or feedback, which incurs additional costs or reserved resources go unused, unless we have received at least five days' advance notice in writing of such delay in delivery. This clause is not meant as 'money-making' penalty clause, but to protect us as an agency, the loss of prescheduled time and most importantly ensuring effective and consistent communication between both parties.

## 3 Warranty and liability

- 3.1 We warrant to the Client that all work carried out by us for the Client will be performed with reasonable care and skill and in accordance with the schedule of deliverables, the timetable and the project costs.
- 3.2 We will make every attempt to adhere to agreed timetables but shall incur no liability whatsoever in consequence of missed deadlines for whatever reasons.
- 3.3 We will be liable to fixbugs and errors that arise in any code that we shall have supplied to the Client or its order for a period of three months after the launch or completion of the relevant project (whichever is the earlier) provided the Client notifies us in writing of such bugs and errors within three months from launch and provided further that these are not attributable to changes made to the code or the configuration by the client or any third party.
- 3.4 The client will be expected to approve the project by fax, email or letter ('sign-off) prior to the launching of a live website, sending of a document for print, duplication of CD ROMs, or sending of newsletters. We will not be responsible for errors or omissions as the request to launch a website, send documents for print, or the sending of newsletters will be deemed to be sign-off.
- 3.5 We shall not be liable to the Client for any of the consequences of, and the Client shall indemnify us against, all losses, liabilities, obligations, expenses and costs (including legal costs) that we may suffer or incur by reason directly or indirectly of;
  - a) the sending by us of information or other material by whatever means or medium (including but not limited to email, direct mail, HTML, SMS, or letter) to a database or list of contacts provided by the client and
  - b) anything related to the content or format of any material supplied or requested by the Client in connection with a project, including any infringement of the intellectual or other proprietary rights of a third party.
- 3.6 We will not be liable for any loss of turnover, sales, revenue, profit, or other indirect consequential or special loss.
- 3.7 While we may assist with the registration and renewal process of URLs, the Client understands that this is their sole responsibility.

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- 3.8 While we can make arrangements for third party hosting, it is the Client's responsibility to back up data, and we shall have no responsibility for data loss, loss of turnover, sales, revenue, profits, or any direct or indirect consequential or special loss due to a malfunction on the server. Additional terms and conditions for the hosting will be applicable.

## 4 Code, technology and intellectual property

- 4.1 We retain sole ownership of all programming, code and other technology developed for the project, as this forms part of a library of routines which are our intellectual property.
- 4.2 The Client and any of its affiliates shall free of royalty enjoy an unlimited license for the usage of the code and may modify or alter the functionality in line with its own requirements provided always that the client shall not sell any products which contains or makes use of the code in competition with us. Under the circumstance that the client should be acquired in whole or in part, then the license may be transferred to the acquiring party under the same terms of the license agreement. The client owns any deliverables, documentation and supporting files delivered during the engagement. The client can distribute all such assets freely within the client organization.
- 4.3 The copyright of all approved designs will be freely assigned to the Client for use in the specified project on completion and receipt of final payment. We will retain the right to use these designs for promotional purposes on the basis that no live data will be used from secure areas of the site. The parties shall work together to ensure that a suitable example of the site is used.

## 5 Confidentiality

- 5.1 All information supplied by the Client will be treated as confidential, unless or until it is within the public domain. Information required by statutory bodies (for example the Stock Exchange) will not be unreasonably withheld. This clause is, however, subject to the terms of any separate confidentiality agreement which is already in place.

## 6 Changes or additions to the terms

- 6.1 No variations of or additions to these terms will be of any force unless agreed to in writing by both parties. We may, however, modify or add to these terms in line with any changes to our terms of business with our customers generally, provided such modification or addition does not materially detract from the contractual rights of the Client.

## 7 Termination

- 7.1 Except in the circumstance where the client terminates a project for cause of negligence, declared by a timely and appropriate written notice

of complaint/s, the Client may terminate a project before completion, but not the fees due. For package deals below CHF 66'000.- or equivalent, these are to be paid in full. For amounts exceeding CHF 66'000.- are subject to a threshold minimum of CHF 66'000 and 20% of the remainder, exceeding the threshold amount. Time and material mandates are exempt and payment due is restricted to time served.

- 7.2 We may terminate a project if it has for any reason become impossible of performance due to circumstances beyond our control, including unsatisfactory co-operation from the Client, we may consider reallocating time in coordination with the client or consider adjusting fees on a case-by-case basis.
- 7.3 Clause 6.1 will not, however, preclude either party from terminating a project by reason of an unremedied material breach by the other party of a fundamental term of the contract, after the breach has not been repaired 30 days after the first registered letter with acknowledgment of receipt. or from exercising whatever rights it then has at law.

## 8 Acceptance of our terms of business

- 8.1 To ensure legal obligations are in place whilst contract terms are being negotiated, both parties agree to be bound by the terms of this agreement until a contract between the parties comes into being. The parties agree that any written or verbal communication from the Client to the Consultant to commence work or receipt of purchase order, prior to contract agreement, implies acceptance of these terms of business.
- 8.2 Deviations or contract specific terms must be specified in writing and attached as an appendix item to the governing contract or order. These terms will supersede the general terms and conditions, where relevant, should a conflict arise.