

Terms

Don't Think Feel limited

TERMS & CONDITIONS

These Terms and Conditions shall govern each and every order and shall form part of the agreement between us for all work carried out by us for you. No variation of any term or condition set out herein shall be effective unless agreed in writing by both parties. The headings in these Terms and Conditions are for convenience only and do not form part of the agreement between us.

1. DEFINITIONS

The words below are agreed to mean as follows:-

"Production": The web site design, print and/or photographic design, video programme, event or new media project that we have agreed to develop and produce for you.

"Proposals": The document supplied by us containing the Production specifications, budget, development stages and delivery dates.

"Fee": The agreed fee for the work carried out by us as set out in our Proposals.

"Intellectual Property Rights": All copyright, design rights, registered designs, trademarks, patents, confidential information, ideas, moral rights and all other rights whatsoever whether those rights are registered or not.

2. PRODUCTION

The Production shall be produced by us in accordance with our Proposals.

3. YOUR OBLIGATIONS

You agree that you will:

- (a) supply us with all source materials to be provided by you for incorporation into the Production by the dates and times specified by us and in the format requested by us;
- (b) co-operate with us in the development of the Production;
- (c) formally approve and sign off various stages of the production process upon request by us.

4. PAYMENT

(a) You agree to pay us in stage payments as set out below:-

- (i) 33.3% of the Fee in cleared funds at time of order and prior to commencement of work by us;
- (ii) 33.3% of the Fee in cleared funds payable half way through the project as defined in the Schedule;
- (iii) remaining 33.3% of the Fee and any agreed extras in cleared funds payable on completion.

Details of sums due and payment dates are set out in the Schedule.

- (b) All terms quoted and payable are exclusive of VAT which will be added where appropriate. We do not operate any duty exempt routines and VAT is payable at current rate on all figures where appropriate.
- (c) We may issue "pro-forma" invoices as an invitation to pay and then issue a "full" invoice when payment has been received and cleared.
- (d) We offer account terms on a discretionary basis for ad-hoc work and payment must be made strictly 30 days from invoice raised date.
- (e) When we incur out of pocket expenses on your behalf in a currency other than sterling, the re-charged exchange rates are calculated based upon an "actual costs to us" whether for credit, cash, American Express or any other type of transaction.

- (f) Any late payment shall attract interest at the rate of 2% (two percent) per month above the base lending rate of Barclays Bank PLC. You will also be liable to reimburse us for any legal costs incurred in connection with recovery of any late payment under this agreement.

5. ADDITIONAL COSTS

We reserve the right to charge additional costs as follows:-

- (a) for amendments to the Production requested by you which go beyond the initial product specifications agreed at outset of this agreement;
- (b) for any third party liability incurred by us (for which a fee or cancellation fee is payable by us) as a result of changes to the specifications requested by you;
- (c) if you fail to meet approval dates / sign off stages in accordance with our requests and additional costs arise out of such delay. (You acknowledge that changes to the Production may become more complex if you do not formally approve and sign off stages of the production process in accordance with our requests and that failure to do so may result in an increase in the Fee and / or delay in delivery dates);
- (d) if there are delays in supply of source materials, collateral, products, services or personnel organised by you or your representatives and / or problems encountered by us in the functionality or usability of such materials or services resulting in additional costs. (You acknowledge that the Fee, time-line and delivery dates are dependant upon the availability, functionality and usability of such materials and services);
- (e) if through no fault of our own, we find ourselves in an overspend position;
- (f) we shall give you prior written notice of any additional costs and shall not incur such additional costs without your prior approval. Such costs shall be added to the Fee to the final instalment payable unless otherwise agreed by the parties.

6. HOSTING

If you agree for us to arrange with hosting on your behalf, you agree to be bound by the terms and conditions of the 3rd party hosting company. Although our best effort will be taken to maintain permanency of the online service, we are not in any way liable for loss, whether direct or indirect, of business, revenue or profits, anticipated savings or wasted expenditure, corruption or destruction of data or for any indirect or consequential loss whatsoever caused by server crash,

server downtime, net congestion, hacking or other illicit usage of the Production, or any other reasons beyond our control.

7. INTELLECTUAL PROPERTY RIGHTS

- (a) Subject to payment in full of all Fees and Expenses due and owing, Don't Think Feel Limited will assign to the Client all Intellectual Property Rights in any design and compiled code created or developed by Don't Think Feel Limited during the course of these services.
- (b) All Intellectual Property Rights of any source code written by us and our employees or agents will vest in and belong to us absolutely. At completion of the production we will store a copy of all required source code in agreed Escrow Service. This will ensure that the Client has access to the source code in any eventuality or any other condition set out in separate Escrow agreement.
- (c) The Client hereby grants an irrevocable royalty free, worldwide non-exclusive right to Don't Think Feel Limited to use and exploit the design and source code for non-competing projects.
- (d) The Client grant to us a non - exclusive royalty free licence to use all materials supplied by you for the purposes of this agreement.
- (e) You hereby warrant that you have obtained all necessary rights, permissions and licences for the use of all materials supplied by you to us. For the avoidance of doubt this includes all third party or voice-over references.
- (f) You warrant that nothing in any material supplied by you is defamatory or subject to any other legal restriction.
- (g) You undertake to indemnify us fully and defend us at your own expense against all costs and losses whatsoever incurred by us, our employees or agents as a result of any claim made against us or any of them as a direct or indirect breach by you of any part of this clause.

8. CONFIDENTIAL INFORMATION

Neither party to this agreement shall disclose to any third party any confidential business, information or future plans of the other party at any time acquired during the existence of this agreement and no reference is to be made to the terms of this agreement by the parties in any advertising, publicity or promotional material without the prior consent of the other party.

9. MORAL RIGHTS / CREDIT

You acknowledge that we assert our moral rights generally in respect of the Production under the Copyright, Designs and Patents Act 1988 and in particular to be credited on the Production in such a manner as the parties will agree.

10. PROMOTION

We reserve the right to use the Production for the purposes of our own advertising including adding our logo/trademark/website link to all work produced and you accept that the Production shall form part of our library of works in this respect.

11. INSURANCE

- (a) Our budget estimates are subject to an errors-and-omissions-excepted clause.
- (b) Any goods with a value over £5,000 plus VAT that are loaned to us (including in transit) should be detailed in writing. We may wish to increase our insurance cover for such items and as such will re-charge any costs associated with increased insurance costs to you.

12. COLLECTION OF MATERIALS

On completion of the job, you agree to arrange for collection of all materials provided by you within 30 (thirty) days of completion of the job unless agreed otherwise. If these are not collected within 30 (thirty) days or within the agreed time period, we may dispose of them, but agree to give you an additional period of at least 14 (fourteen) days prior notice.

13. RESTRICTIONS

You undertake that you will not during the period commencing on the date of this agreement and terminating 12 (twelve) months from delivery of the Production, entice, solicit or engage any person who was an employee or a consultant or

otherwise engaged by us during such period and whilst we both consider this restriction to be reasonable we agree that if a court of competent jurisdiction considers that the restriction is invalid but would have been valid if either the period or its scope were reduced then the restriction shall continue to apply but with such restriction(s) necessary to enable its validity.

This clause excludes persons who are employed less than 16 hours per week or are in receipt of basic pay less than £25,000.

We agree to be limited by the same clause in respect to your employees.

14. MCPS

Where appropriate, we licence all music/compositions used in the Production with the MCPS or the relevant rights owner.

15. DATA PROTECTION ACT

We are registered under the Data Protection Act 1998 and reserve the right to store and collect mechanical and/or electronic data relevant to the Production. You undertake that you will not collect any data from or via the Production without obtaining the appropriate registration under the Data Protection Act 1998 and complying with your obligations under the Data Protection Act.

16. INDEMNITY

You undertake to fully indemnify us against all liabilities, claims, demands, actions, costs, damages and losses arising out of any breach by you of any of the terms hereunder. In the event of any claim, dispute, action, writ or summons against you, you agree to provide full details to us at the earliest opportunity and shall not settle any such matter without first consulting us.

17. TERMINATION

- (a) If at any stage you decide not to proceed further with the production of the Production you shall in any event be liable to pay us 100% (one hundred percent) of the Fee together with all sums due under this agreement. You acknowledge that under clause 6 of this agreement, the licence for use of any Intellectual Property Rights in the Production shall not take

effect until receipt by us of all payments due to us hereunder.

- (b) Our liability for any loss or damage consequential or otherwise and howsoever caused whether in tort (to include without limitation for negligence) or contract or otherwise shall not exceed the amount invoiced by us to you in respect of the agreement.
- (c) In addition to any other rights and remedies at law, either party may by written notice to the other party terminate this agreement with immediate effect in the following circumstances:
 - (i) where the other party has committed any serious breach of its obligations under this agreement and (if the breach is capable of remedy) has failed to remedy such breach within fourteen (14) working days of receipt of a notice specifying the breach and requiring remedy; or
 - (ii) where the other party goes into voluntary or involuntary liquidation or is declared insolvent either in bankruptcy proceedings or other legal proceedings or has reached an agreement with creditors due to its failure or inability to pay its debts as they fall due, or where a receiver is appointed over the whole or part of the its business.
- (d) Without prejudice to sub-clause (a) of this clause and notwithstanding the termination of this agreement for whatever reason, you shall remain liable to pay us all sums due on or prior to the date of termination and all provisions of this agreement expressed to remain in effect after termination shall remain in full force and effect.
- (e) If either party is affected by any circumstances beyond the reasonable control of that party ("Force Majeure") it shall forthwith notify the other party of the nature and extent thereof. Neither party shall be liable to the other for delay in performance, nor non-performance of any of its obligations under this agreement when due to any Force Majeure of which it has notified the other party and the time for

performance of that obligation shall be extended accordingly.

18. GENERAL

- (a) No waiver, variation or amendment of this agreement shall be valid unless made in writing and signed by both parties.
- (b) Nothing in this agreement shall be deemed to constitute a partnership between the parties and neither of the parties shall do or suffer to be done anything whereby it may be represented as a partner of the other party.
- (c) You shall execute such deeds and documents and take such steps as may be required to confirm to us any rights granted to us hereunder.
- (d) The UK shall be the place of first publication of any material on the Internet.
- (e) Notices will be deemed to have been served (if delivered by hand) upon delivery or (if sent by first class post) two (2) days after being so sent or (if transmitted by facsimile or by electronic mail) when dispatched.
- (f) Either party may notify a change of address, facsimile or electronic mail to the other party, such notification to be effective five (5) business days after the notification is given.
- (g) This agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English Court.



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Please signify your acceptance of these Terms and Conditions by dating, signing and printing your name in the spaces marked below and return one copy to us.

I/We* agree that these Terms and Conditions shall govern all work carried out by you for us and I/We* confirm that they shall form part of the agreement between us. * Delete as appropriate

SIGNED:

NAME:

DATE: