

TERMS & CONDITIONS

Supply or Service

1. INTERPRETATION

1.1 In these Conditions:

“Charges”	the Supplier’s charges for the Specified Service as shown on the Specification Sheet or Development Proposal.
“Client”	the person named on the Specification Sheet for whom the Supplier has agreed to provide the Specified Service in accordance with these terms.
“Commencement Date”	the commencement date described on the Specification Sheet or Development Proposal.
“Contract”	the contract for the provision of the Specified Service, incorporating these conditions.
“Document”	includes, in addition to a document in writing, a map, plan, design, drawing, picture or other image, or any other record of any information in any form.
“Input Material”	any Documents or other materials, and any data or other information provided by the Client relating to the Specified Service.
“Output Material”	any Documents or other materials, and any computer program, data or other information provided by the Supplier relating to the Specified Service.
“Specification Sheet”	the sheet to which these terms are applied.
“Specified Service”	the service to be provided by the Supplier for the Client and referred to in the Specification Sheet or Development Proposal.
“Supplier”	Carpe Diem t/a Carpe Diem Incorporated Limited.

The headings in these terms are for convenience only and shall not affect their interpretation.

2. SUPPLY OF THE SPECIFIED SERVICE

- 2.1 The Supplier shall provide the Specified Service to the Client from the Commencement Date subject to these terms. Any changes or additions to the Specified Service or these terms must be agreed in writing by the Supplier and the Client.
- 2.2 The Client shall at its own expense supply the Supplier with all necessary Documents or other materials, and all necessary data or other information relating to the Specified Service, within sufficient time to enable the Supplier to provide the Specified Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.
- 2.3 The Client shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Supplier shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to or to the order of the Client.



- 2.4 The Specified Service shall be provided in accordance with the Specification Sheet, subject to these terms. Or, in the case of a Retainer, provided within hours prescribed; unused hours to be rolled into the next month but no more, unless aggregated hours have been agreed and at the discretion of the Supplier, subject to these terms.
- 2.5 The Supplier may at any time without notifying the Client make any changes to the Specified Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Specified Service.
- 2.6 The Client acknowledges that the Supplier has no control over third party search engines and as such the Supplier shall not be liable for any change in search engine rules of inclusion or change to index listings which results in the Client's website being removed from search engine listings or for total loss of position/ranking on any search engine.

3. CHARGES

- 3.1 The Client shall pay the Charges and any additional sums which are agreed between the Supplier and the Client for the provision of the Specified Service.
- 3.2 All charges quoted to the Client for the provision of the Specified Service are exclusive of any Value Added Tax, for which the Client shall be additionally liable at the applicable rate from time to time. The
- 3.3 Supplier shall be entitled to invoice the Client following the end of each month in which the Specified Service is provided.
- 3.4 Further the Client will reimburse the Supplier for all reasonable expenses incurred in the discharge of its obligations under the Contract on a monthly basis.
- 3.5 The Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set off or other deduction) within 30 days of the date of the Supplier's invoice.
- 3.6 If payment is not made on the due date, the Supplier shall be entitled, without limiting any other rights it may have, to charge interest on the outstanding amount (both before and after any judgement) at the rate of 2% above the base rate from time to time of Barclays Bank plc from the due date until the outstanding amount is paid in full. The Supplier shall further be entitled to suspend the provision of the specified Service until all overdue sums are paid in full, together with any interest due thereon. Any invoice outstanding beyond the payment terms will be referred to 3rd party debt recovery and will
- 3.7 be subject to a surcharge of 15% plus vat to cover the collection costs incurred. This surcharge together with all other charges and legal fees incurred will be the responsibility of the customer and will be legally enforceable.

4. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 4.1 The property and any copyright or other intellectual property rights in any Output Material shall belong to the Supplier.
- 4.2 All Output Material or other information provided by the Supplier to the Client shall during the term of this Contract and after its termination be kept confidential by the Client and may only be used by the



Client for the purposes of the Client's own business as currently carried on. We hereby grant you a non-exclusive licence of such intellectual property rights for the purpose of operating your website.

- 4.3 All Input Material or other information provided by the Client to the Supplier shall during the term of this Contract and after its termination be kept confidential by the Supplier and may only be used by the Supplier for the purpose of providing the Specified Service.
- 4.4 The provision of clauses 4.2 and 4.3 shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party or are already lawfully known by the receiving party at the time of receipt, and shall cease to apply if at any future time they become public knowledge through no fault of the receiving party.
- 4.5 The Client warrants that any Input Material and its use by the Supplier for the purpose of providing the Specified Service will not infringe the copyright or other rights of any third party, and the Client shall indemnify the Supplier against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 4.6 Subject to paragraph 4.5, the Supplier warrants that any Output Material and its use by the Client for the purposes of utilising the Specified Service will not infringe the copyright or other rights of any third party, and the Supplier shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 4.7 The Supplier owns the intellectual property rights in its software and database and the Client shall have no right to access or use the source code of the Supplier's software. The Client agrees that it shall not attempt to reverse compile, decompile, disassemble or reverse engineer the Supplier's software nor shall it amalgamate, amend, incorporate, modify, reproduce, translate or otherwise alter the same into or with any other software or use the same in conjunction with any other software.
- 4.8 The Client shall not attempt to make any part of the Supplier's software available or otherwise allow access to the same to any third party except as required by law. In addition, the Client shall not use the Supplier's software for the benefit of any third party or in the business of website consultancy.
- 4.9 The Copyright for coding of all web sites remains the property of the Supplier. The web site can therefore not be reproduced or sold on without written consent from the Supplier. We do not in any way restrict you from having a copy of the web site for your own storage or Escrow, as governed in the Copyright, Designs and Patents Act 1988.
- 4.10 In the event that coding from your web site is taken without permission, the Client can pursue the breach of copyright directly, or on both the Supplier's and Client's behalf.

5. WARRANTIES

- 5.1 The Supplier warrants to the Client that the Specified Service will be provided using all reasonable care and skill and in accordance with relevant established current professional standards. Where the Supplier supplies in connection with the provision of the Specified Service any goods (including Output Material) supplied by a third party, the Supplier does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to

the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to the Supplier.

- 5.2 The Supplier shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non arrival, or any other fault of the Client.

6. CLIENT REVIEW

- 6.1 The Supplier will provide the Client with an opportunity to review the appearance and content of the website during the design phase and once the overall website development is completed. At the completion of the project, such materials will be deemed to be accepted and approved unless the Client notifies The Supplier otherwise within ten (10) days of the date the materials are made available to the Client.
- 6.2 In the event that the Supplier is prevented from progressing the project due to lack of a response or materials from the Client, the Supplier reserves the right to charge a daily 'waiting charge' of £80 per day. The Supplier will notify the Client in writing before any charge is applied and will give a minimum four (4) weeks' notice.
- 6.3 If a response or materials are not provided in eight (8) weeks from the original request then the Client is considered to be in default of the commission, the project will be terminated and the Client sent the final invoice for immediate payment. The Supplier will agree, at its discretion, to recommence the commission after agreement is reached on a new quotation document and once the original fees have been paid.

7. LIABILITY

- 7.1 The Supplier's liability to the Client for fraud or for death or personal injury caused by its negligence shall not be limited.
- 7.2 Subject to condition 6.1, the Supplier's maximum liability in contract, tort, negligence or otherwise arising out of, or in connection with, the Specified Service shall be limited to the amount of the Charges.
- 7.3 The Supplier shall not be liable in any way for any loss of profits, indirect, incidental, special or consequential loss of whatsoever nature arising from the provision of or failure to provide the Specified Service or the use of the Specified Service by the Client (including, without limitation loss of revenue or data) whether caused by the negligence of the Supplier, its employees or sub-contractors or otherwise and even if such loss was reasonably foreseeable or the Supplier had been advised of the possibility of the Client incurring the same.
- 7.4 Subject to condition 6.1, the Supplier shall have no liability to the Client in respect of any claim unless the Client shall have served notice of the same on the Supplier within 12 months of the date



the Client became aware of the circumstances giving rise to any such claim or the date when the Client ought reasonably to have become so aware.

- 7.5 The Supplier shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations in relation to the Specified Service, if the delay or failure was due to any cause beyond the Supplier's reasonable control.

8. NO POACHING

- 8.1 The Client shall not (and so that each of sub-clauses 7.1 and 7.2 below shall be deemed to constitute a separate agreement and shall be construed independently of the other), at any time from the date of this Agreement to the expiry of 9 months after the date of termination or expiry thereof:- solicit, or
- 8.2 endeavour to entice away from the Supplier, any employee or sub-contractor of the Supplier who is or has been involved in the provision of the Specified Service; or
- 8.3 employ or attempt to employ, as an employee or in any other capacity, any employee or sub-contractor of the Supplier who is or has been involved in the provision of the Specified Service.

9. TERMINATION

- 9.1 This Contract shall, subject as herein provided, continue in force until completion of the Specified service.
- 9.2 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these terms and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, becomes bankrupt, makes a voluntary arrangement with its creditors or has a receiver or administrator appointed.
- 9.3 Termination of this Contract shall be without prejudice to any rights and obligations existing at the date of termination, or any claim by one party against the other for any breach of this Contract committed prior to termination, which shall continue unaffected.
- 9.4 Termination of this Contract shall not affect the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such date of termination.

10. GENERAL

- 10.1 These Conditions (together with the terms, if any, set out in the Specification Sheet) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.



- 10.2 A notice required or permitted to be given by either party to the other under these terms shall be in writing addressed to the other party at its address specified on the Specification Sheet or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.3 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.4 If any provision of these terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and the remainder of the provision in question shall not be affected.
- 10.5 No party to this Contract shall assign any of its rights or obligations hereunder without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld or delayed. The Supplier shall be entitled to sub-contract the provision of the Specified Services or any part thereof to a third party.
- 10.6 A person who is not a party to the Contract shall have no right under the terms of the Contracts (Rights of Third Parties) Act to enforce any term of the Contract and the provisions of that Act are hereby excluded.
- 10.7 All variations or modifications to the Contract shall only be binding if recorded in writing and signed by a duly authorised officer of each of the Client and the Supplier.
- 10.8 English law shall apply to the Contract, and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

