

# Terms & Conditions for Yello Studio Limited



## 1. Definitions

In these Conditions the following definitions apply:

**Client:** the client (including any agents, employees or subcontractors), to whom the Website Proposal and these Conditions are addressed and Yello Studio shall provide the Services to;

**Client Material:** all documents, information and material provided by the Client relating to the Services;

**Conditions:** means the terms and conditions as amended from time to time;

**Contract:** the contract between Yello Studio and the Client for the supply of Services, for which these Conditions shall apply;

**Deliverables:** the deliverables detailed in the Website Proposal or as otherwise agreed in writing by the parties;

**Hosted Services:** services enabling the Client to access website via a server platform;

**IPR:** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights of forms of protection in any part of the world;

**Proposal:** the specification for the Services as set out in the proposal document attached to these Conditions.

**Services:** the services to be provided by the Yello Studio, including without limitation any Deliverables, to be provided by Yello Studio under the Contract as set out in the Proposal or as otherwise agreed by the parties in writing;

**Yello Studio:** is Yello Studio Limited CRN 06946765 of 11a Gandy Street, Exeter, Devon, EX4 3LS.

## 2. Incorporation of Conditions

2.1. The Proposal constitutes an offer by the Client to purchase the Services in accordance with these Conditions. The Proposal shall be deemed to be accepted when both parties sign a copy of the relevant Proposal, at which point and on which date the Contract shall come into existence.

2.2. These Conditions shall apply to all Contracts placed for the Services unless otherwise agreed in writing by Yello Studio.

2.3. Any items not defined within these Conditions shall refer to matters defined on the Proposal and shall be incorporated into the Contract.

2.4. Any changes or additions to the Contract must be agreed in writing by the Yello Studio.

## 3. Supply of Services

3.1. Yello Studio shall provide the Services to the Client subject to these Conditions with reasonable care and skill.

3.2. Yello Studio and the Client will work together to complete the relevant Services in a timely manner. Yello Studio will use all reasonable endeavours to ensure that the Services are supplied as specified and on time, however time shall not be of the essence of the provision of Services.

3.3. Unless otherwise agreed by the parties in writing, the Client shall at its own expense supply Yello Studio with all necessary documents or other materials, and all necessary data or other information relating to the Services, within sufficient time to enable Yello Studio to provide the Services in accordance with the Website Proposal. The Client shall ensure the accuracy of all Client Material and clarity of any instructions, and procure, where required any third party consents.

## 3. Cost and Payment

1.1. The costs for the relevant Services are as specified in the Proposal or as agreed in writing by the parties.

1.2. All costs and sums quoted (unless otherwise specified) are exclusive of VAT, for which the Client shall be additionally liable at the applicable rate from time to time.

1.3. Yello Studio will render invoices to the Client on an interim basis during the provision of the Services.

1.4. Yello Studio may require funds in advance of costs and after delivery of the Services, as set out in the Proposal.

1.5. All invoices shall be paid by the Client within 30 days of the date of the invoice.

## 3. The Deliverables

3.1. The Deliverables shall be produced in accordance with the Proposal or as otherwise agreed in writing between the parties, subject to clause 7.

3.2. Yello Studio shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Deliverables.

3.3. The Client is expected to test fully any application or programming relating to any Deliverables developed by Yello Studio before being made generally available for use. Where "bugs", errors or other issues are found after the Deliverables are live. Yello Studio will endeavour to correct these issues to meet the standards of function outlined in the Proposal, provided that the Client makes Yello Studio of such errors within a reasonable time after delivery.

## 4. Hosted Services

4.1. Where Yello Studio provides Hosted Services they shall be subject to a separate service level agreement which will be provided to the Client before commencement of any Hosted Services.

## 5. Acceptance

5.1. The parties shall agree the relevant sign off and acceptance for the Services in accordance with Yello Studio's standard procedures. The Client shall be deemed to have accepted the work in relation to the Services if they have not been rejected on or before the 14<sup>th</sup> day after completion.

## 6. Intellectual Property Rights

6.1. Yello Studio retains ownership of all IPR in the Deliverables created for the Client until payment of the final invoice. Unless otherwise agreed in writing, on payment in full Yello Studio transfers all IPR in the Deliverables to the Client with the exception of any website supplied to the Client whereby, Yello Studio grants to the Client a perpetual, non-terminable, royalty free, worldwide licence to use and operate any such

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- website (as it has looked in the past, looks at present and/or will look in the future) for the purpose of the Client's business.
- 6.2 The Client takes full responsibility for ensuring the relevant permissions are firstly obtained from the original IPR holder in relation to the Client Material and the Client warrants that they have obtained all necessary rights, permissions and licenses for the use of all materials supplied.
- 6.3 Yello Studio reserves the right to refuse any material which may be deemed offensive, abusive, indecent, defamatory, obscene, menacing or in breach of confidence, copyright, privacy, or any other right or in way thought to be unsuitable for reproduction. Yello Studio accepts no responsibility for the content produced into the Deliverables.
- 6.4 Each party will indemnify the other against all costs, claims, demands, expenses and liabilities arising out of or in connection with any claim that the normal use or possession of the Deliverables or Client Material infringes the IPR of any third party.
- 6.5 Yello Studio may wish to provide a link to Yello Studio in either small type or by a small graphic at the bottom of any website developed by it as part of the Services. Where applicable. If a graphic is used, it will be designed to fit in with the overall design.
- 7. Cancellation**
- 7.1 Should the Client wish to cancel at any point during the Services they shall remain liable for the work that has taken place and shall be invoiced accordingly.
- 8. Term and Termination**
- 8.1 This Contract shall continue in full force and effect until completion of the Services (including delivery of Deliverables) and thereafter shall be deemed to be terminated. Termination shall not prevent action being undertaken by either party contemplated to exist after such completion, namely clauses 2, 7, 9, 11, 12, and 15.
- 9. Force Majeure**
- 9.1 Yello Studio shall not be liable for any default (or deemed to be in breach of contract) by reason of any delay due to any circumstance beyond their reasonable control.
- 10. Confidentiality**
- 10.1 The parties hereby undertake to each to each other to keep confidential all information (written or oral) concerning the business and affairs that they shall have obtained under the Contract or which it has been advised is confidential in nature save that which is trivial or obvious or already in its possession other than information in the public domain or information relating to outstanding invoices which remain unpaid by the Client.
- 10.2 The parties shall use best endeavors to prevent disclosure of confidential information in accordance with this clause 11.
- 11. Warranty**
- 11.1 Yello Studio makes no express warranties and specifically disclaims any implied warranties including any implied warranty of merchantability or fitness for a particular purpose, with respect to the performance of the Services under the Contract and these Conditions to the extent permissible by law.
- 11.2 Yello Studio does not guarantee, and nothing contained in the Contract or these Conditions shall be construed as a guarantee, that the Services performed or to be performed will achieve any project level of results.
- 12. Liability**
- 12.1 The entire liability of Yello Studio to the Client under or in connection with the Contract, whether directly or indirectly, and these Conditions (whether in respect of the provision of the Services, damages, breach, indemnity or otherwise) shall not in any circumstance exceed the price of the Contract.
- 12.2 Yello Studio shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any work carried out on and behalf of the Client or any Client Material or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or any other fault of the Client.
- 12.3 Except in respect of death or personal injury caused by Yello Studio's negligence, Yello Studio shall not be liable to the Client by reason of any representation (unless fraudulent), or any term or any duty for loss of anticipated savings, business revenues, or profits, or any indirect, special or consequential loss, loss of goodwill, data and all other such loss (whether or not arising in the normal course of business), or other economic loss or other claims however caused under the Contract or the provision of the Services.
- 13. Data Protection**
- 13.1 The Client is responsible for ensuring that any "Personal Data" (as defined in the Data Protection Act 1998 (the Act)) it supplies to Yello Studio has been collected within the terms of the Act. Yello Studio agrees to process the data in accordance with lawful and responsible written instructions provided by the Client.
- 14. General Matters**
- 14.1 Yello Studio may employ sub-contractors for carrying out any part of the Services.
- 14.2 It is acknowledged that Yello Studio shall not be liable for breach of contract or any other failure or defect in performance of the Services which are performed other than by employees of Yello Studio or performed by the Client or its agents or their employees or by any other third parties.
- 14.3 If any term or provision of these Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provision shall continue in full force and effect.
- 14.4 These Conditions (together with the Website Proposal or any other contract or specification) constitute the entire agreement between the parties.
- 14.5 No delay, act or omission by either the Client or Yello Studio in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 14.6 This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 14.7 This Contract will be governed by the law of England and Wales. Disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales.