

1 INTERPRETATION

1.1 In these Terms the following words shall have the following meanings:

Word	Meaning
“the Customer”	the person, firm or company who instructs OnTop Media Ltd to perform the Services;
"Customer Material"	means all material provided by the Customer for OnTop Media Ltd to use in the development of the website;
“the Contract”	the agreement between OnTop Media Ltd and the Customer to perform the Services for the Customer, which OnTop Media Ltd shall confirm in writing, specification document, or have confirmed to them and to which these Terms shall apply;
“OnTop Media Ltd”	OnTop Media Limited (registered number 07614926) whose registered office is at OnTop House, 26 Lorne Park Road, Bournemouth, BH1 1JL;
“the Goods”	any goods agreed in the Contract to be delivered to the Customer by OnTop Media Ltd (including any part or parts of them);
“the Services”	any Services agreed in the Contract to be delivered to the Customer by OnTop Media Ltd (including any part or parts of them). The nature of OnTop Media Ltd’s work requires development of a project and therefore any initial contract cannot be construed as a specification to the final functionality, processes and working;
“the Specification”	A definition of the functionality of the project. The specification is likely not to be initially defined in its entirety and will evolve during a project life cycle;
"Generic Software"	means the software, applications, navigation models, information architecture, database structures, content management systems, third party applications, software engineering, functionality and other generic components used in the web site design;
"Bespoke Material"	means the graphics, icons, text, branding, and other graphical and audio material created by OnTop Media under these Terms;
"Writing"	post or e-mail.

2 APPLICATION OF TERMS

- 2.1 These Terms are the only terms upon which OnTop Media Ltd is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2 No terms or conditions endorsed upon, delivered with or referred to elsewhere in any written or verbal communications between OnTop Media Ltd and the Customer will form part of the Contract and the Customer waives any right which it otherwise might have to rely on such terms or conditions.
- 2.3 In the event of a conflict between any express written terms of the Contract and these Terms, the written terms of the Contract shall prevail.

3 APPOINTMENT

- 3.1 OnTop Media Ltd shall deliver, and the Customer shall accept, the Goods and/or the Services in accordance with and subject to these Terms.
- 3.2 The Goods and Services are personal to the Customer and all written reports or other communications shall only be for the benefit of the Customer and not passed to any third party.

4 CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall do all such things that the Contract provides are to be done by the Customer or which OnTop Media Ltd shall reasonably require in order to assist OnTop Media Ltd in delivering the Goods and/or performing the Services.

5 TIME FOR PERFORMANCE

- 5.1 OnTop Media Ltd shall use reasonable endeavours to deliver the Goods and/or perform the Services by the time specified in the Contract or if no such time is agreed, then by the time as may be agreed from time to time by OnTop Media Ltd and the Customer in writing. If no time is so specified, OnTop Media Ltd shall deliver the Goods or perform the Services within a reasonable time.
- 5.2 OnTop Media Ltd shall not be liable for the consequences of any delay in delivering the Goods or performing the Services.

6 PRICE

- 6.1 The price for the Goods and/or Services ("the Price") shall be as stated in the Contract or as agreed later by OnTop Media Ltd and the Customer. The Price is based upon the current costs of production and may be varied by OnTop Media Ltd providing written notice to the Customer at any time prior to delivery or performance to meet any rise in such costs. If OnTop Media Ltd and the Customer do not specify a price in the Contract and subsequently fail to agree on one, OnTop Media Ltd shall be entitled to charge a fair price for the Goods and/or Services, based on its daily rates where appropriate and any special factors relating to the Contract.
- 6.2 The Price shall not include the cost of hosting websites in a live or test environment, e-mail, domain name registration or renewal, security certificates, third party components, search

engine registration/optimisation, photography, models, props, manuals or training unless otherwise agreed and stated in the contract.

- 6.3 The Price shall be exclusive of value added tax which shall, where applicable, be charged to and payable by the Customer in addition.
- 6.4 Where the Customer requires OnTop Media Ltd to carry out any preliminary work or work additional to that provided for in the Contract, OnTop Media Ltd shall be entitled to charge for such additional work at such sum as the parties shall agree, or, in default of agreement, at OnTop Media Ltd's standard daily rates. In the event that delivery of the Goods or performance of the Services is delayed or disrupted by factors beyond the control of OnTop Media Ltd, OnTop Media Ltd shall be entitled to a fair and reasonable adjustment to its fee.
- 6.5 Following confirmation by OnTop Media Ltd in Writing of the Contract, any cancellation or postponement of the Contract by the Customer shall entitle OnTop Media Ltd to charge a reasonable cancellation or postponement fee to recover any costs incurred and compensate for the anticipated time the Contract with the Customer was to take and which OnTop Media Ltd has planned to allocate to the Customer.
- 6.6 Should the customer delay a project following commencement then OnTop Media Ltd withhold the right to review any additional costs associated in restarting that project and implement any rate changes that may have occurred in the interim.

7 PAYMENT

- 7.1 The Customer shall pay the price for the Goods and/or the Services within 14 days of the date of the invoice in respect of the Contract ('the Due Date').
- 7.1.1 If a project incorporates a payment schedule (based on time or project development stages), and a customer's partial-payment invoice reaches 14 days overdue (14 days past Due Date), OnTop Media Ltd reserves the right to invoice the entire balance to the customer, at any stage in the project/service.
- 7.1.2 OnTop Media Ltd reserves the right to automatically charge any debit/credit card held on account, for any projects that the customer has approved, once an invoice reaches 14 days overdue (14 days past Due Date). OnTop Media Ltd will notify the customer when a card payment has been attempted, regardless of the result.
- 7.2 Unless agreed to the contrary in the Contract, payment for the work performed in each calendar month shall become due at the end of that month and shall be charged to the Customer at OnTop Media Ltd's standard daily rates.
- 7.3 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by OnTop Media Ltd to the Customer.
- 7.4 If payment is not made by the Due Date, then the Customer shall pay interest to OnTop Media Ltd on such sum due from time to time for payment at the annual rate of 4 % above the base lending rate from time to time of Barclays Bank Plc accruing on a daily basis until payment is made, whether before or after any judgment.

7.5 OnTop Media Ltd reserve the right to disable any web project, hosting, email or back office/administrative panel, when invoices are not settled by the Due Date. The Customer may be liable to pay additional re-connection fees once the invoice is settled.

7.6 All Deposits are non-refundable.

8 TITLE/RISK

8.1 Title in the Goods supplied to the Customer under the terms of the Contract shall not pass to the Customer until OnTop Media Ltd has received in full (in cash or cleared funds):

8.1.1 the Price; and

8.1.2 all other sums which are or which become due to OnTop Media Ltd from the Customer in respect of the Contract or otherwise.

8.2 Until title in the Goods has passed to the Customer, the Customer shall:

8.2.1 hold the Goods on a fiduciary basis as OnTop Media Ltd's bailee;

8.2.2 store the Goods so far as is possible (at no cost to OnTop Media Ltd) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as OnTop Media Ltd's property;

8.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

8.2.4 maintain the Goods in satisfactory condition insured on OnTop Media Ltd's behalf for their full price against all risks to the reasonable satisfaction of OnTop Media Ltd. On request the Customer shall produce the policy of insurance to OnTop Media Ltd; and

8.2.5 hold the proceeds of the insurance referred to in sub-clause 8.2.4 on trust for OnTop Media Ltd and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

9 INTELLECTUAL PROPERTY RIGHTS

In consideration for the receipt by OnTop Media Ltd of all monies payable to OnTop Media Ltd by the Customer, OnTop Media Ltd assigns all intellectual property rights in the Bespoke Material to the Customer.

9.1 All intellectual property rights in the Customer Material will belong to and remain vested in the Customer subject to a worldwide, royalty-free, non-exclusive, non-transferable licence for OnTop Media Ltd to use it to the extent necessary to deliver the Goods or perform the Services.

9.2 The Customer warrants that it owns the intellectual property rights in the Customer Material and that it has the right to grant the licence in clause 9.4.

9.3 The intellectual property rights in everything except for the Bespoke Material and the Customer Material will remain vested in OnTop Media Ltd.

9.4 OnTop Media Ltd grants to the Customer a worldwide, royalty-free, non-exclusive, non-transferable licence for the Customer to use the Generic Software only for the purpose of operating, maintaining and developing the website created by OnTop Media Ltd for the Customer.

9.5 The licence in clause 9.4 above shall terminate if:

9.5.1 any term of these Terms is breached by the Customer; or

9.5.2 the Customer enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver is appointed in respect of the whole or any part of the Customer's undertaking or assets.

9.6 Unless otherwise agreed, OnTop Media Ltd's legal costs in preparing any agreement with the customer to which these Terms relate shall be borne to the customer.

10 THIRD PARTY RIGHTS

10.1 Unless expressly agreed otherwise in the Contract, the Customer shall be responsible for obtaining clearances in respect of third party copyright works, trademarks, designs or other intellectual property supplied by the Customer to OnTop Media Ltd or directly placed by the customer through a content management system or similar application onto servers and/or other IT equipment under the control of OnTop Media Ltd or their suppliers.

10.2 Unless expressly agreed otherwise in the Proposal, OnTop Media Ltd shall be responsible for obtaining clearances in respect of third party copyright works, trademarks, designs or other intellectual property supplied by OnTop Media Ltd to the Customer under the Contract.

10.3 Each party shall indemnify the other and keep it indemnified against all costs and expenses incurred in dealing with, defending and/or settling any claims, and all damages and costs awarded by any court of competent jurisdiction, resulting from or arising out of the other's failure to comply with clauses 10.1 and 10.2 above.

10.4 The customer will cover any legal costs incurred by OnTop Media Ltd in the creation or consideration of supplied agreements, contracts and/or legal documents in relation to the transferral and clarification of ownership and assignment of OnTop Media Ltd work or initial contracts delivered by the client.

11 WARRANTY AND LIMITATION OF LIABILITY

11.1 OnTop Media Ltd warrants the performance of its original software against specification for 3 months following the date of its delivery/launch to the Customer. To clarify responsibility, OnTop Media Ltd require the client to sign and return to OnTop Media Ltd, our Standard support agreement (available from your Account Manager) within the first 30 days. Clients not signing and returning the agreement will not be eligible for on-going free support unless at the discretion of OnTop Media Ltd.

11.2 OnTop Media Ltd will not warrant the performance of its original software, unless formally agreed in writing to the contrary, where the Customer has/had access to the server and hence has been able to alter or attempt to alter its coding.

11.3 Following completion of the warranty period customers will be invited to extend the period under the terms of a support agreement to be agreed by both parties. OnTop Media Ltd will not be responsible for the performance of original software unless an agreement is in place. If

no contract exists then support may be offered at OnTop Media Ltd's discretion and charged at our hourly rate and completed/investigated in our chosen timeframe.

11.4 Additional work/additions on existing original software will be considered a "patch/modification" unless stated prior to order and will not warrant an extension to the original software's support period. Larger modifications will by right, have their own support agreement and this will be independent to the original software's support unless stated prior to order.

11.5 OnTop Media Ltd undertakes to use reasonable skill and care in delivering the Goods or performing the Services.

11.6 Should additions/modifications be made to existing software errors occurring in other parts/areas of the software deemed as a consequence of the minor modification will be rectified at cost unless OnTop Media Ltd have committed to full analysis of implications prior to the change and undertaken a full test plan of all the system as part of the original work. In brief OnTop Media Ltd will not be responsible unless full procedure has been commissioned.

11.7 OnTop Media Ltd undertake to provide during development reasonable effort to afford the customer clarification to the specification as interpreted by OnTop Media Ltd. However any change/modification to this specification due to client misunderstanding of the proposed specification or amendments caused by misunderstanding, hindsight or user feedback with not be construed as an error and therefore charged at OnTop Media Ltd daily rate. This will apply at any stage of development and following launch.

11.8 Apart from the foregoing, OnTop Media Ltd makes no representations or gives no warranties of any kind with respect to the Goods or the Services and all such warranties including those in Sales of Goods legislation are excluded to the fullest extent permissible by law.

11.9 OnTop Media Ltd shall not be liable in any way for any losses, damages, costs or expenses, or for any loss of revenue, profit, goodwill or any consequential or indirect or special loss or damage arising out of the provision of the Goods or Services, or of any error or defect therein, or of the delivery, delayed delivery or non-delivery of the Goods or the performance, delayed performance or non-performance of the Services. Any liability not excluded by the above (or any exclusion of liability which is held by a court of competent jurisdiction to be invalid or unreasonable) shall be limited to a maximum aggregate liability of £500,000. Nothing in this clause shall exclude liability for death or personal injury arising from the negligence of OnTop Media Ltd or its employees or agents, or any other liability which it is prohibited from excluding at law.

11.10 If OnTop Media Ltd is required to act as an agent of the Customer, the Customer will fully indemnify OnTop Media Ltd if any losses or claims result.

12 DURATION

The Contract shall come into effect on OnTop Media Ltd's confirmation in Writing to the Customer and shall (where applicable) continue in accordance with terms specified in the Contract, or until the Goods have been delivered or the Services have been performed, unless terminated earlier pursuant to Clause 13.

13 TERMINATION

13.1 Either party (“the terminating party”) shall have the right at any time by giving notice in writing to the other party to terminate the Contract forthwith if:

13.1.1 the other party commits a material breach of any of these Terms, and has failed to remedy it within 30 days of receipt of a notice from the terminating party requiring the other party to do so;

13.1.2 any distress, execution or other process is levied upon any of the assets of the other party; or

13.1.3 the other party enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if an order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver is appointed in respect of the whole or any part of the other party’s undertaking or assets.

13.2 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the parties accrued prior to termination. The clauses which expressly or impliedly have effect after termination (which include but are not limited to clauses 6, 7, 8, 9, 10, 11, 15, 16, 18 and 19) will continue to be enforceable notwithstanding termination.

14 ASSIGNMENT AND SUB-CONTRACTING

14.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of OnTop Media Ltd.

14.2 OnTop Media Ltd may assign or sub-contract the Contract or any part of it to any person, firm or company and shall give notice to the Customer at the time of such assignment or sub-contract.

15 CONFIDENTIALITY

15.1 Each party agrees and undertakes that it will keep confidential, and will not use for its own purposes nor without the prior written consent of the other, disclose to any third party, any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party unless such information is public knowledge or already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of these Terms or comes lawfully into the possession of such party from a third party.

15.2 The provisions of this clause shall remain in force and effect notwithstanding any termination of the Contract.

15.3 All OnTop Media Ltd documentation supplied to the customer remains “Commercial in confidence” and should not be copied or distributed for reasons beyond the project.

16 PUBLICITY AND ACKNOWLEDGEMENTS

16.1 OnTop Media Ltd shall be entitled to publicise its role in delivering the Goods and performing the Services and shall be entitled to use the Bespoke Material for that purpose.

16.2 The Customer shall ensure that OnTop Media Ltd's contribution in performing the Contract and OnTop Media Ltd's copyright (if any) are properly acknowledged.

16.3 For the avoidance of doubt, OnTop Media Ltd's statutory right to be identified as the author of any copyrightable works created in undertaking the Contract under sections 77-79 of the Copyright, Designs and Patents Act 1988 or any amendment or re-enactment thereof is asserted.

16.4 OnTop Media Ltd reserve the right to feature a credit link on the web site to any website owned by OnTop Media Ltd to publicise who created the project, unless otherwise agreed in The Contract. OnTop Media Ltd may charge a commission to remove such credit.

17 FORCE MAJEURE

17.1 OnTop Media Ltd shall not be liable to the Customer if it is prevented from or delayed in the delivery of the Goods or performance of the Services due to circumstances beyond the reasonable control of OnTop Media Ltd including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, riot, civic commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

18 GENERAL

18.1 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

18.2 Failure or delay by either party in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of that party's rights under the Contract.

18.3 No person shall acquire any rights under the Contract by virtue of the Contracts (Rights of Third Parties) Act 1999, save that OnTop Media Ltd may assign or sub contract the Contract or any part of it to any person, firm or company.

18.4 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

19 COMMUNICATIONS

19.1 All communications between the parties about the Contract must be in writing and delivered by hand, sent by pre-paid first class post, sent by facsimile transmission or sent by e-mail:

19.1.1 In case of communications to OnTop Media Ltd to the address given to the Customer and as may be changed by OnTop Media Ltd from time to time; or

19.1.2 In the case of communications to the Customer to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to OnTop Media Ltd by the Customer from time to time.

19.2 Communications shall be deemed to have been received:

19.2.1 If sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

19.2.2 If delivered by hand, on the day of delivery;

19.2.3 If sent by e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

19.3 Communications addressed to OnTop Media Ltd shall be marked for the attention of the project manager for the Contract in question.

19.4 Any inappropriate behaviour will result in the contract being terminated with immediate effect. Inappropriate behaviour includes (but is not limited to):

19.4.1 Abusive, aggressive to threatening statements, Crude Sexual References;

19.4.2 Rude behaviour towards staff;

19.4.3 Bad language directed at staff or management;

19.4.4 Harassment, repeated public blogging, repeated negative reviews;

19.4.5 Shouting at staff or management;

19.4.6 Detrimental personal remarks, racism, sexism, or any other immoral discrimination;

19.4.7 Blackmail, threats of violence, violence, assault, or verbal assault.

20 FAIR USAGE

20.1 OnTop Media Ltd we may refer to “unlimited” with regards to bandwidth allowance, number of design revisions, hosting specifics, email specifics, ecommerce specifics, or anywhere within our websites, our marketing publications, our quotations, or our Specification Documents. The term “Unlimited” is to imply “Reasonable” and is subject to reasonable use. Any requests that;

- Are not economically viable, Impossible / Extremely Difficult to achieve;
- Costly to OnTop Media Ltd (outside of The Contract / Reasonable request);
- Illegal, Immoral;
- Unreasonable, or Contradictory to previous requests;

Will automatically be disapproved.

20.2 OnTop Media Ltd has the final say as to what constitutes any of the above.

21 FEEDBACK

21.1 OnTop Media Ltd welcomes feedback from its Customers on all aspects of its work. Feedback can be given through the e-mail address “feedback@ontop.co.uk” and complaints through support@ontop.co.uk” or through customers’ known contacts at OnTop Media Ltd. OnTop Media Ltd’s senior management take an active role in reviewing all feedback and dealing directly with the issues raised.

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