



# CODE AJAX TERMS AND CONDITIONS

## INTRODUCTORY

- 1 Revisions of these Terms and Conditions shall take effect immediately after publication on the Code Ajax website.
- 2 Your signature on a printed copy of this agreement is not required in order for the agreement to be legally binding on you. Your use of the services shall constitute a virtual signature, having the same force and effect as if you had actually signed a printed copy of this agreement.

## DEFINITIONS

- 3 "us, our, we": Code Ajax Limited, a company registered in England and Wales, company registration number: 6380070. Registered office: Bank House, Southwick Square, Southwick, West Sussex, BN42 4FN who are the services supplier.
- 4 "you, your": the client being the purchaser of the services, who enters into this contract with us.
- 5 "the services": the consultancy, marketing, internet, search engine and software services as agreed to verbally or in writing between you and us from time to time and that we have agreed to perform at your reasonable direction.

## APPOINTMENT

- 6 You agree to appoint us as your sole supplier to perform the services, unless or until ended by either party giving to the other not less than three (3) months' notice in writing.
- 7 You undertake not to use any other supplier or to perform the services internally.
- 8 Either party may give written notice to terminate this agreement if the other:
  - 8.1 commits a material breach of this agreement which is not remedied within 14 days of being required to do so in writing
  - 8.2 goes into liquidation or has a receiver or administrator appointed.

## RESPONSIBILITIES

- 9 You will:
  - 9.1 not hinder us and provide full co-operation
  - 9.2 make available as soon as is reasonably possible to us all materials required to complete work to the agreed standard and within agreed timescales
  - 9.3 provide to us in a timely manner all assistance and information and materials which we may reasonably request for the performance of the services, and understand and agree that we will not be liable for delays in performance caused by any delay or failure to provide same to us
  - 9.4 co-operate with us and comply with any agreed procedures and not to withhold or delay approvals unreasonably

- 9.5 provide and be responsible for any data or information relating to your own products and services and for services necessary for the provision of the services
- 9.6 not modify requirements once they have been agreed and work has commenced and understand and agree that, if you do wish to modify or add to requirements, such modifications or additions may change the price of the services
- 9.7 understand and agree that we will not be responsible for any delays to the services caused by such modifications or by any circumstances that are not within our reasonable control
- 9.8 understand and agree that any modifications or additions to the services will be carried out at our discretion
- 9.9 understand and agree that we accept no responsibility to ensure such modifications or additions are error free and reserve the right to charge an according amount for any correction to these or further modifications or additions
- 9.10 understand and agree that we will not be liable for costs incurred, compensation or loss of earnings due to the failure to meet agreed deadlines
- 9.11 understand and agree that any timescales or target dates are not binding and are for guidance purposes only
- 9.12 understand and agree that we supply the services for contracted time not for a specific task
- 9.13 understand and agree that your approval of copy, layouts, creative and artwork whether physical or electronic will be sufficient authority for us to purchase the agreed production materials and prepare proofs, and your approval of proofs will be sufficient authority for us to publish such materials
- 9.14 understand and agree that your approval of schedules and estimates will be sufficient authority for us to make necessary reservations and contracts for space, time and other facilities
- 9.15 agree to exercise due diligence in your directions to us regarding preparation of materials and must be able to substantiate all claims and representations. You are responsible for all trademarks, service mark, copyright and patent infringement clearances. You are also responsible for arranging, prior to publication, any necessary legal clearance of materials we prepare.
- 9.16 understand and agree that you must make sure that any critical functionality you require from any software is included prior to confirming an order and that you take responsibility for the suitability, accuracy, utility or function of any software used in the services. You understand and agree that all licenses and warranties are as provided by the software originators
- 9.17 understand and agree your verbal instructions, signed order form, order acknowledgement or purchase order or email are sufficient for us to purchase and install software and then you are liable for any price of the software and support agreements
- 9.18 understand and agree you will be assumed to have read, understood, approved and agreed all software licensing terms and conditions if we purchase or install software on your behalf. If we have to agree to an end user license agreement



on installing software on your behalf then you have fully accepted any such end user license agreement

- 9.19 understand and agree you will provide or seek any information, additional software, support or co-operation pertaining to the server required in order for the application(s) to be correctly developed / deployed
- 9.20 understand and agree you are responsible for testing fully any application or programming relating to a site developed by us before it is available for use. If you discover any errors after a site goes live, we will endeavour, but are not obliged, to correct these issues to meet the standards of function outlined in the brief
- 9.21 undertake you will not, directly or indirectly:
  - 9.21.1 reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of, or found at or through the services or any software, documentation, or data related to the services
  - 9.21.2 remove any proprietary notices or labels from the services or any software, modify, translate, or create derivative works based on the services or any software
  - 9.21.3 copy, distribute, pledge, assign, or otherwise transfer or encumber rights to the services or any software
- 9.22 understand and agree that in the event of cancellation by you, goods, services and licences already contracted for by us in relation hereto must be paid for by you
- 9.23 undertake to keep secure from third parties any passwords issued to you by us in connection with any services or hosting
- 9.24 undertake fully to virus-check all data supplied to us
- 9.25 grant authority to us at our discretion to:
  - 9.25.1 gain FTP access to your website
  - 9.25.2 gain unrestricted access to all relevant databases to complete our work
  - 9.25.3 add additional directories, pages and content, change link structures and menus, modify page structure and change code understand and agree that if you purchase hosting services via us to abide by the terms of the agreement we have with our suppliers a copy of which will be made available on request
- 9.26 understand and agree if you purchase hosting services via us to abide by the terms of the agreement we have with our suppliers a copy of which will be made available on request
- 9.27 understand and agree that where we provide you with a capability to send and receive electronic mail:
  - 9.27.1 you understand and agree to the risks associated with using email and receiving and transmitting email messages

- 9.27.2 you undertake to hold us harmless and indemnify us from and against any liabilities, damages, losses, costs and expenses, including fees of every kind and nature caused by or arising out of claims based upon the receipt, transmission or loss of any content
- 9.27.3 you understand and agree that you are responsible for the security and proper use of all user identities and passwords used in connection with email (including changing passwords on a regular basis) and must take all necessary steps to ensure that they are kept confidential, secure, used properly and not disclosed to unauthorised people
- 9.27.4 you understand and agree that we assume no responsibility for the deletion of or failure to store email messages. email has a fixed storage limit per mailbox. Email messages when received may not be stored if the size of such email would put the destination mailbox over its storage limit. It is your responsibility to monitor the size of your mailboxes in order to prevent any mailbox from reaching its storage limit
- 9.27.5 you understand and agree that we are not responsible for providing your access to the internet or paying for such service and we are not responsible for providing any equipment necessary for you to make a connection to the internet, including but not limited to computers and modems
- 9.27.6 you understand and agree that we do not warrant that the service will meet any particular requirements of yours, that the service will be uninterrupted, that emails will be sent or received within any particular time, or that the service will be secure or error free
- 9.27.7 you understand and agree that we do not give any warranty in respect of any goods or services purchased or obtained through the service or any transactions entered into through the service
- 9.27.8 you understand and agree that we may terminate your access to any part or all of the service and any related service(s) at any time, with or without cause, with or without notice, effective immediately and subscription fees or other payments will not be refunded for any terminated account
- 9.28 undertake that during the term of the services and for a period of two (2) years thereafter, you shall not, without our prior written consent offer employment to or enter into any contract for services with any of our employees or subcontractors (or individuals employed or sub-contracted to such companies) who have provided the services. If this clause is breached then you agree to pay us a fee equivalent to twice the particular individual's gross annual remuneration package (ex VAT) which will be payable immediately upon the breach
- 9.29 undertake to pay all taxes, fees, levies and duties whether for import or otherwise arising in any part of the world in connection with the services. If both parties agree, we may pay any such sums, and you undertake to reimburse such sums to us immediately on demand
- 9.30 understand and agree that we may immediately disable your access to the services without refund if we believe in our sole discretion that you have violated any of the policies listed above or elsewhere in this agreement
- 9.31 understand and agree that your rights and obligations under this agreement are personal to you and may not be assigned, transferred, charged, licensed, sub-contracted or otherwise delegated, transferred or disposed of in whole or in part. However, in the event that you wish to assign your rights because of



change of ownership or business development, you may assign your rights hereunder to a third party with our prior agreement, such agreement not to be unreasonably withheld

- 9.32 understand and agree that if we provide the services for a client or customer of yours, you:
  - 9.32.1 shall make no guarantees, warranties or representations in excess of those contained herein in relation to the services;
  - 9.32.2 shall indemnify us against any claims relating to any guarantees, warranties or representations so made by you; and
  - 9.32.3 shall procure that your customer performs such obligations hereunder are as relevant to enable the project to be completed and
  - 9.32.4 shall ensure that your customer understands and agrees to these terms and conditions
  - 9.32.5 understand and agree that we will not be liable or become involved in any disputes between you and your clients or customers
- 9.33 confirm that the specific representation of your marketing and advertising whether as web pages or other services are not:
  - 9.33.1 pornographic, sexist, extremist or glorifications of violence
  - 9.33.2 in violation of good taste nor national or international law
  - 9.33.3 in violation of trademark, patent or other third party rights and
  - 9.33.4 that if they are we may terminate any campaign and that you will immediately pay any and all fees due under this agreement
- 10 We will:
  - 10.1 exercise reasonable care and skill in providing the services. All other warranties or conditions whether express or implied, relating to quality of the services are excluded
  - 10.2 use reasonable endeavours to complete the services within the timescales set
  - 10.3 attempt to promptly advise you of any potential or actual delays
  - 10.4 inform you as soon as reasonably possible about any circumstances that are likely to prevent us from completing the services within the timescales set out
  - 10.5 conduct our work with reasonable care
  - 10.6 comply with relevant safety and other legislation or regulatory requirements that apply to the services
- 11 We will use reasonable endeavours to ensure that a website and any scripts or programs are free of errors.
- 12 We will use reasonable endeavours to ensure that software products are problem free, but the ultimate responsibility lies with you to ensure that all software is functioning correctly before use.



- 13 We will use reasonable endeavours to ensure that any developed / designed site or application will function correctly on the server on which it is installed and that it will function correctly when viewed with the most used version of the web browsing software Microsoft Internet Explorer and to an acceptable level with Mozilla browsers. We can offer no guarantees of correct function with all browser software.
- 14 We will use reasonable endeavours whilst reselling or recommending hosting companies to ensure that they are of sound reputation but make no guarantees as to availability or interruption.
- 15 We will take all reasonable steps to comply in the event that you request in writing any cancellation or amendment to work in progress if we can do so within our contractual obligations with media and suppliers. If this is not possible, you agree that you will reimburse us for:
  - 15.1 any charges or expenses to which we are committed
  - 15.2 work in progress.

## **INTELLECTUAL PROPERTY**

- 16 All copyright and intellectual property rights in all work written, provided or produced by us for the services does vest or shall vest solely in us immediately and unconditionally upon being developed, produced or written and remains our copyright and may only be commercially reproduced or resold with our permission unless the rights have been assigned by us to you.
- 17 If you request and on payment of an agreed sum and provided that all obligations arising from this agreement (including those relating to payment and the period of notice) have been met, we may agree to assign such copyright and other intellectual property rights as we do hold to you on termination of this agreement.
- 18 For avoidance of doubt, we shall retain the copyright and other intellectual property rights in any material contained in any presentation or submission prepared by us for you.
- 19 The copyright and other intellectual property rights in all software programs used to process data and lists shall remain our exclusive property.
- 20 You acknowledge and agree that any identifiable and original idea or concept presented by us in relation to any promotion or campaign invented or developed by us shall be available only for such a promotion or campaign and shall not be used for any other purposes whatsoever without our express prior agreement given in writing.
- 21 The copyright and other intellectual property rights in creative work commissioned by us from third parties will normally vest in the supplier. We will use reasonable endeavours to ensure appropriate usage rights in respect of this material. If required, and at your expense, we shall use reasonable endeavours to obtain extended rights or assignment of copyright and other intellectual property rights.
- 22 You take responsibility for any copyright infringements caused by materials submitted by you to us. We reserve the right to refuse any material of a copyrighted nature unless you give adequate proof of permission to use such material.

## **PROTECTION AND CONFIDENTIALITY**

- 23 Even where no work is agreed, the ideas and concepts presented to you shall remain strictly confidential and you shall not use them in any way, including communication to any third party, without our express prior consent.

- 24 We acknowledge a duty not to disclose without your permission during or after the term of appointment, any confidential information resulting from studies or surveys commissioned and paid for by you. You, in turn, acknowledge our right to use as we see fit any general marketing or advertising intelligence in the field of your product or service, which we have gained in the course of our appointment.
- 25 During the period of this agreement and at all times thereafter, each party shall treat as confidential and not reproduce or disclose to any other party all information, including but not limited to:
- 25.1 software programs whether in source or object code format
  - 25.2 technical data
  - 25.3 correspondence
  - 25.4 the details of this agreement or the services or estimates and
  - 25.5 other material which is stated to be the confidential and / or trade secret information of the other party or
  - 25.6 which may be reasonably presumed to be so
- 26 Each party shall safeguard such information to the same extent that it safeguards its own confidential and proprietary information and in any event with not less than a reasonable degree of protection.
- 27 Notwithstanding the foregoing, we shall be entitled to provide to third parties such information as is necessary for it to perform their obligations in relation to the services, or as may be required by law.
- 28 The obligation of the parties not to disclose information shall not apply to:
- 28.1 information which was already in the public domain or
  - 28.2 in the rightful possession of the other party, at the time of its disclosure or
  - 28.3 which is disclosed as a matter of right by a third party or
  - 28.4 which passes into the public domain by acts other than the unauthorised acts of the other party
- 29 Both parties agree that in the event of a breach of confidentiality, money or damages may not be an adequate remedy, and therefore, in addition to any other legal or equitable remedies, either party shall be entitled to seek injunctive relief to prevent an anticipated breach of confidentiality.
- 30 Within ten (10) days of the completion of the services, each party shall return all originals and any copies thereof of any confidential information of the other party

## **CHARGES**

- 31 We charge based on the following:
- 31.1 time, services and materials including but not limited to:
    - 31.1.1 the time spent on the matter
    - 31.1.2 the importance and value of the matter to you

- 31.1.3 the complexity of the matter or the difficulty or novelty of the issues raised
- 31.1.4 the skill, labour, specialist knowledge and responsibility involved
- 31.1.5 considering facts relevant to your strategy and campaigns
- 31.1.6 reading and considering relevant information and the number and importance of the documents prepared or perused
- 31.1.7 creative and development work
- 31.1.8 the place where and the circumstances in which the matter or any part of it is transacted
- 31.1.9 personal and telephone attendances on you and on your behalf
- 31.1.10 correspondence with you
- 31.1.11 attendances upon, dealing with and instructing third parties
- 31.1.12 time spent travelling
- 31.2 Postage, other transportation charges, telecommunications charges and copying costs especially incurred in carrying out your instructions and safeguarding your interests charged at net cost.
- 31.3 Travel, subsistence and hotel expenses of our employees or sub-contractors especially incurred in carrying out your instructions and safeguarding your interests charged at net cost.
- 31.4 All goods and services, purchased by us on your behalf will be subject to a minimum mark up of 17.65%.

## **TERMS OF PAYMENT**

- 32 When you commission work, a deposit of 30% of the estimate is required from you. We will then bill you monthly for ongoing costs. You are obliged to pay any outstanding balance in full once work is completed.
- 33 You must pay outstanding accounts for work carried out by us or on our behalf in full no later than 14 days from the date of the invoice. We may contact you via email and telephone to remind you of such payments if they are not received when due.
- 34 We will not publish in media nor assign intellectual property until cleared funds are available to us. For the avoidance of doubt, we regard domain names, website hosting and pay per click advertising as media.
- 35 Until payment is received for all outstanding bills and for unbilled work in progress, we may exercise a lien or charge over certain property belonging to you which has come into our possession in the course of our engagement and access to online media may be denied and / or online media removed.
- 36 We reserve the right to terminate or suspend the services if you are overdue with payments at any time.
- 37 In the event that we do not receive payment on the due date, we will charge you interest at the rate of 4% above the base rate of HSBC Bank plc from the date the payment was due to the date we receive payment.

- 38 Following consistent non-payment of an invoice our solicitors will contact you with a view to taking the matter further and if need be to seek payment through legal procedures and if necessary court summons.

## **TERMS OF BUSINESS WITH MEDIA AND SUPPLIERS**

- 39 For the avoidance of doubt, we regard domain names, website hosting and pay per click advertising as media.
- 40 The levy of 0.1% payable by advertisers through agencies to the Advertising Standards Board of Finance applies to all gross media rates on press display, advertisements (excluding classified lineage and semi-display), on outdoor, cinema and direct mail appearing in the UK and is not subject to commission.
- 41 If we purchase media on your behalf, unless otherwise stated, we make contracts with the media and suppliers in accordance with media rate card or other standard conditions or at such prices or conditions as may be negotiated separately.
- 42 Your rights and liabilities shall correspond to those between us and the various media and other suppliers under such standard conditions.
- 43 If you purchase media then you are responsible for ensuring that it is fit for purpose and meets any technical specifications demanded by any software, programs or processes.

## **LEGAL LIABILITY AND OTHER CLAIMS**

### **LIMITATION OF LIABILITY**

- 44 We shall provide the services in a professional manner with due care, skill and competence at a level commensurate with industry standards. No warranty or guarantee is given that the services will be successful in whole or in part. We shall not be liable for any indirect, consequential, special or incidental loss or damage suffered by you or any third party, including loss of property, of data or of profits even if we have been advised of the possibility of such damage arising directly or indirectly from the provision of the services. Our liability to you or any third party, for a claim of any kind arising as a result of or related to any product or service, whether in contract, in tort (including negligence or strict liability) or otherwise, under any warranty, condition or guarantee or otherwise, shall be limited to monetary damages and the aggregate amount thereof for all claims relating to any particular project or product provided shall in any event be limited to a sum equivalent to the aggregate amount paid to us under the relevant project or for the relevant product which gave rise to the claim. You will indemnify us against any claim that exceeds this figure. This limit will not apply in the case of death or personal injury caused by our negligence. You may bring no action, regardless of form, more than one (1) year after the events that gave rise to the cause of the action.
- 45 We shall not be liable to you for any delay in, or omission of, publication or transmission or any error in any advertisement, nor delay in posting or delivery, in the absence of default or neglect on our part.
- 46 Notwithstanding anything contained in the agreement, we will not be liable for any increased costs, loss of profits, consequential, economic, or indirect loss arising in any way in connection with the performance (or non performance) of the obligations related to this agreement.



## **YOUR INDEMNITY TO US**

- 47 You will indemnify us against any loss incurred as the result of any civil claims or proceedings brought against us based upon any advertising and other work prepared for you by us and approved by you before publication.

## **ADVERTISING STANDARDS**

- 48 We use reasonable endeavours to comply with the British Codes of Advertising and Sales Promotion, administered by the ASA, and with the DMA (UK) Direct Marketing Codes of Practice and other codes of advertising standards laid down on a self-regulatory basis.
- 49 You will provide a list warranty confirming that any data supplied to us for use in your marketing campaigns has been appropriately obtained and registered under the Data Protection Act 1998.

## **GENERAL PROVISIONS**

- 50 We reserve the right to refuse to handle in any way, material which may be deemed offensive, illegal or in any way controversial
- 51 The agreement represents the complete and exclusive statement of the agreements concerning between the parties and supersedes and replaces all prior communications, drafts, contracts, representations, warranties, undertakings and agreements of whatever nature whether oral or written, between the parties.
- 52 The headings of this agreement shall not affect its interpretation.
- 53 We shall be entitled to subcontract any or all of the services to suitably qualified personnel or organisations. In this event, our rights and obligations hereunder shall not be diminished.
- 54 Any notices or other communication required to be given under this agreement shall be given in writing and sent by recorded delivery mail or facsimile transmission confirmed by hard copy letter to the address of the relevant party as given in the quotation and shall be deemed received forty-eight (48) hours after dispatch.
- 55 The waiver or failure of either party to exercise in any respect any right or remedy pursuant to this agreement shall not be deemed a waiver of any further rights or remedies.
- 56 The relationship between you and us is that of independent contractors and nothing in this agreement shall be construed to:
- 56.1 give either party the power to direct or control the activities of the other party
  - 56.2 constitute the parties as employer and employee, principal and agent, partners, joint venturers, co-owners or otherwise participants in any joint undertaking
  - 56.3 allow either party to create or assume any obligations on behalf of the other party for any purpose
- 57 During the term of the services and for a period of two (2) years thereafter, you shall not, without our prior written consent offer employment to or enter into any contract for services with any of our employees or subcontractors who have provided the services.

- 58 If any court or administrative body of competent jurisdiction shall find any provision of this agreement to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
- 59 This Agreement and the relevant quotation constitutes the entire agreement between the parties and supersedes all previous negotiations and agreements, written or oral, express or implied between the parties with respect to the services. No amendment to this Agreement shall be effective unless specifically stated to amend this Agreement and executed by authorised representatives of both parties.
- 60 In the event of any conflict between the provisions of this Agreement and any purchase order or other document issued by you the provisions of this Agreement shall prevail.
- 61 If any provision of this Agreement is found to be invalid, illegal or unenforceable it shall be considered severable and the remaining provisions shall not be impaired. Any such provision shall be interpreted to the extent possible to give effect to its intended purpose.
- 62 Upon termination of the services:
- 62.1 you shall pay us for all work performed up to the date of termination by us and we shall provide to you any materials for which you have so paid
- 62.2 each party shall return to the other all materials and property including proprietary data which has been provided to it for the purposes of this Agreement and / or the services

## **LAW**

- 63 This agreement is subject to the law of England and Wales and the parties agree to submit to the jurisdiction of the Courts of England and Wales in respect of any dispute or difference arising under the agreement.