



1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

UltraGloss: UltraGloss LLP

Contract: any Proposal provided by UltraGloss to the Client, together with these terms & conditions which shall be deemed to form part of such Contract.

Client: the person, firm or company who purchases Services from UltraGloss.

Client's Equipment: any equipment, systems, or facilities provided by the Client and used directly or indirectly in the supply of the Services.

Deliverables: all Documents, products and materials developed by UltraGloss in relation to the Project or the Service in any form, including any computer programs or data and any other deliverables specified in the Proposal.

Document: includes, in addition to any document in writing, any artwork, drawing, map, plan, specification, diagram, design, picture or other image, report, tape, disk or other device or record embodying information in any form.

Expenses: the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by UltraGloss in connection with the Services.

Client Materials: all Documents, information and materials provided by the Client relating to the Services.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, 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 right, moral 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 or forms of protection in any part of the world.

Pre-existing Materials: all Documents, information and materials provided by UltraGloss relating to the Services which existed prior to the commencement of the Contract including computer programs and data.

Project: any project for the provision of Services (other than under the terms of a Retainer) and which is described in a Proposal.

Proposal: any proposal or quotation provided by UltraGloss to the Client and which is agreed between the parties.

Retainer: a Contract under which UltraGloss agrees to provide ongoing Services for a fixed number of days/hours per month, or a fixed Service every month, (or at such other intervals as shall be agreed).

Services: such marketing and/or design services, or any other services (such as web hosting) which the parties agree that UltraGloss shall provide to the Client.

Third Party Costs: the cost of all services and products acquired by UltraGloss from the third parties in connection with the provision of the Services, including print, mailshots, venue hire, postage, couriers, website hosting services, advertising, data sourcing, and the supply of any materials.

Website: any website designed, created or hosted by UltraGloss under the terms of any Proposal.

Website Software: where the Contract includes website development, the software for the Website commissioned by the Client.

1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these conditions.

1.3 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 Where the words include(s), including or in particular are used in these terms and conditions, they are deemed to have the words without limitation following them and where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

2. APPLICATION OF CONDITIONS

2.1 These Conditions shall:

- (a) apply to and be incorporated into the Contract; and
- (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Client's purchase order, confirmation of order, acceptance of a Proposal or specification, or implied by law, trade custom, practice or course of dealing.

2.3 Any proposal or quotation submitted by UltraGloss to the Client is valid for a period of 14 days from its date, provided that UltraGloss has not previously withdrawn it.

3. COMMENCEMENT AND DURATION

3.1 UltraGloss shall provide the Services from such date as UltraGloss shall specify.

3.2 The Services shall continue to be supplied until the Project is completed or, in the case of a Retainer, until the Contract is terminated by one of the parties giving to the other not less than 3 months notice (or such other period of notice as is stated in the Proposal), unless the Contract is terminated in accordance with clause 13.

4. ULTRAGLOSS' OBLIGATIONS

4.1 UltraGloss shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance in all material respects with the Proposal.

4.2 UltraGloss shall use reasonable endeavours to meet any performance dates specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence of the Contract.

4.3 It is the Client's responsibility to check and approve in writing any proofs submitted by UltraGloss, and UltraGloss accepts no responsibility or liability for any errors identified once the proofs have been approved. UltraGloss shall be entitled to charge for all costs and expenses incurred in making any alterations to proofs once these have been approved.

5. CLIENT'S OBLIGATIONS

5.1 The Client shall:

(a) co-operate with UltraGloss in all matters relating to the Services and appoint a Client Manager in relation to the Services or the Project, who shall have the authority contractually to bind the Client on matters relating to the Services or that Project;

(b) provide, for UltraGloss, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Client's premises, office accommodation, data and other facilities as requested by UltraGloss;

(c) provide, in a timely manner, such Client Material and other information as UltraGloss may request and ensure that it is accurate in all material respects; and

(d) inform UltraGloss of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Client's premises where UltraGloss (or its agents, subcontractors or employees) may be required to attend.

5.2 If UltraGloss's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, sub-contractors or employees, UltraGloss shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay, and UltraGloss shall be entitled to charge the Client as if the Services had been performed in full.

5.3 The Client shall be liable to pay to UltraGloss, on demand, all reasonable costs, charges or losses sustained or incurred by UltraGloss (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to UltraGloss confirming such costs, charges and losses to the Client in writing.

5.4 The Client shall not, without the prior written consent of UltraGloss, at any time from the date of the Contract to the expiry of 6 months after the completion of the Project or the last date of supply of the Services or termination of the Contract, solicit or entice away from UltraGloss or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of UltraGloss in the provision of the Services.

5.5 Any consent given by UltraGloss in accordance with clause 5.4 shall be subject to the Client paying to UltraGloss a sum equivalent to 20% of the then current annual remuneration of UltraGloss's employee or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the Client to that employee or sub-contractor.

6. CLIENT MATERIALS

6.1 The Client shall ensure that the Client Materials do not infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights) (Inappropriate Content).

6.2 If the Services include Website hosting, the Client acknowledges that UltraGloss has no control over any content placed on the Website by visitors to the Website and does not purport to monitor the content of the Website. UltraGloss reserves the right to remove content from the Website where it reasonably suspects such content is Inappropriate Content. UltraGloss shall notify the Client promptly if it becomes aware of any allegation that any content on the Website may be Inappropriate Content.

6.3 The Client shall indemnify UltraGloss against all damages, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content.

6.4 UltraGloss may include a statement on the home page of the Website that the Website was designed by it.

7. CHANGE CONTROL

7.1 If either party requests a change to the scope or execution of the Services, UltraGloss shall, within a reasonable time, provide a written estimate to the Client of:

- (a) the likely time required to implement the change;
- (b) any variations to UltraGloss's charges arising from the change; and
- (c) any other impact of the change on the terms of the Contract.

7.2 UltraGloss may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If UltraGloss requests a change to the scope of the Services for any other reason, the Client shall not unreasonably withhold or delay consent to it.

7.3 If the Client wishes UltraGloss to proceed with a change, UltraGloss has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.

7.4 UltraGloss may charge for its time spent in assessing a request for change from the Client at its standard daily/hourly fee rates.

8. CHARGES AND PAYMENT

8.1 Where the Services are provided on the basis of a Retainer:

- (a) the charges payable shall be calculated in accordance with UltraGloss's standard daily/hourly fee rates, as amended from time to time by UltraGloss
- (b) UltraGloss shall ensure that every individual whom it engages on the Services completes time sheets recording time spent, and UltraGloss shall use such time sheets to calculate the charges covered by each invoice.

8.2 Where the Services are provided as a Project, the total price for the Services shall be the amount set out in the Proposal.

8.3 In either case the charges exclude the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom UltraGloss engages in connection with the Services, and VAT, which UltraGloss shall add to its invoices at the appropriate rate.

8.4 UltraGloss will charge the Client for all Third Party Costs stated in any Proposal or as otherwise agreed with the Client. UltraGloss shall be entitled to retain any rebate or discount offered by the relevant third party without passing this on to the Client, or otherwise reserves the right to charge the Client (at its absolute discretion) an uplift on the amount charged by such third party;

8.5 Charges for Services provided on the basis of a Retainer will be payable monthly in advance, or as otherwise stated in the Proposal. In the case of Services provided as a Project, UltraGloss shall, unless otherwise stated in a Proposal, invoice the Client on completion of the Project and such invoice is payable in cleared funds within 14 days of receipt. In either case UltraGloss reserve the right to require payment in advance of any Expenses or Third Party Costs, failing which payment for such Expenses and/or Third Party Costs shall be payable in cleared funds within 14 days of receipt of invoice.

8.6 Without prejudice to any other right or remedy that it may have, if the Client fails to pay UltraGloss on the due date, UltraGloss may:

- (a) charge interest on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of Barclays Bank PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and UltraGloss may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
- (b) suspend all Services until payment has been made in full.

8.7 Time for payment shall be of the essence of the Contract.

8.8 All sums payable to UltraGloss under the Contract shall become due immediately on its termination, despite any other provision. This clause 8.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

8.9 UltraGloss may, without prejudice to any other rights it may have, set off any liability of the Client to UltraGloss against any liability of UltraGloss to the Client.

9. INTELLECTUAL PROPERTY RIGHTS

9.1 All Intellectual Property Rights in the Deliverables (including in the content of any Website and the Website Software), but excluding the Client Materials, arising in connection with the Contract shall be the property of UltraGloss, and UltraGloss hereby grants the Client a non-exclusive licence of such Intellectual Property Rights for the purposes for which the Deliverables are provided. Such licence shall terminate on termination of the Contract howsoever arising.

9.2 The Client shall indemnify UltraGloss against all damages, losses and expenses arising as a result of any action or claim that the Client Materials infringe the Intellectual Property Rights of any third party.

9.3 UltraGloss shall indemnify the Client against all damages, losses and expenses arising as a result of any action or claim that any Deliverables infringe any Intellectual Property Rights of a third party, other than infringements referred to in clause 9.2.

9.4 The indemnities in clause 9.2 and clause 9.3 are subject to the following conditions:

(a) the indemnified party promptly notifies the indemnifier in writing of the claim;

(b) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;

(c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

(d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

9.5 The indemnities in clause 9.2 and clause 9.3 may not be invoked to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

10. CONFIDENTIALITY AND ULTRAGLOSS' PROPERTY

10.1 The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by UltraGloss, its employees, agents or sub-contractors and any other confidential information concerning UltraGloss's business or its products which the Client may obtain. The Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Client's obligations to UltraGloss, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.

10.2 All Documents and materials supplied by UltraGloss to the Client (including Pre-existing Materials) shall, at all times, be and remain, as between UltraGloss and the Client, the exclusive property of UltraGloss, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to UltraGloss, and shall not be disposed of or used other than in accordance with UltraGloss's written instructions or authorisation.

10.3 This clause 10 shall survive termination of the Contract, however arising.

11. LIMITATION OF LIABILITY - THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CONDITION

11.1 This clause 11 sets out the entire financial liability of UltraGloss (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

(a) any breach of the Contract;

(b) any use made by the Client of the Services, the Deliverables or any part of them; and

(c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

11.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.3 Nothing in these Conditions limits or excludes the liability of UltraGloss:

(a) for death or personal injury resulting from negligence; or

(b) for any breach of the terms implied by s12 Sale of Goods Act 1979 or s2 Sale of Goods and Services Act 1982; or

(c) fraud, or any other liability which cannot be excluded or limited under applicable law.

11.4 Subject to clause 11.2 and 11.3:

(a) UltraGloss shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of contract, loss of use, loss of corruption of data or information, or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) UltraGloss's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

12. DATA PROTECTION

12.1 The Client acknowledges and agrees that details of the Client's name, address and payment record may be submitted to a credit reference agency, and Personal Data will be processed by and on behalf of UltraGloss in connection with the Services.

12.2 Where the Services include website hosting, UltraGloss warrants that, to the extent it processes any Personal Data on behalf of the Client:

- (a) it shall act only on instructions from the Client; and
- (b) it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

12.3 In this clause 12, Personal Data has the meaning given in the Data Protection Act 1998.

13. TERMINATION

13.1 Subject to clause 13.3, the Contract shall terminate automatically on completion of the Project, or otherwise in the case of a Retainer, until terminated on 3 months notice, or such other period of notice as shall be set out in the Proposal.

13.2 Without prejudice to any other rights or remedies which UltraGloss may have, UltraGloss may terminate the Contract without liability to the Client immediately on giving notice if:

- (a) the Client commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the bankruptcy or winding up of the Client, or circumstances arise which entitle a court of competent jurisdiction to make a bankruptcy or winding-up order of the Client; or
- (d) an administrator or receiver is appointed of any of the Client's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint an administrator or receiver or manager of the Client, or if any other person takes possession of or sells the Client's assets; or
- (e) the Client makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the Client ceases, or threatens to cease, to trade; or
- (h) the Client takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.3 On termination of the Contract under clause 13.2:

- (a) the Client shall immediately pay to UltraGloss all of UltraGloss's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, UltraGloss may submit an invoice, which shall be payable immediately on receipt;
- (b) the Client shall, within a reasonable time, return all Pre-existing Materials and Deliverables. If the Client fails to do so, then UltraGloss may enter the Client's premises and take possession of them. Until they have been returned or repossessed, the Client shall be solely responsible for their safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

14. FORCE MAJEURE

UltraGloss shall have no liability to the Client under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of UltraGloss or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

15. VARIATION

Subject to clause 7, no variation of the Contract shall be valid unless it is in writing and signed by or on behalf of each of the parties.

16. WAIVER

16.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

17. SEVERANCE

17.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

17.3 The parties agree, in the circumstances referred to in clause 17.1, and if clause 17.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

18. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

19. ASSIGNMENT

19.1 The Client shall not, without the prior written consent of UltraGloss, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.2 UltraGloss may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

20. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. RIGHTS OF THIRD PARTIES

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

22. NOTICES

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address, or fax number, provided in writing by that party from time to time (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this clause 22 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

23. GOVERNING LAW AND JURISDICTION

23.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.

23.2 The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

This agreement has been entered into on the date stated at the beginning of it.