

DESIGN AND WEBSITE DEVELOPMENT TERMS

1. APPLICATION OF THE GENERAL CONDITIONS

- 1.1 This Design and Website Development Terms shall be read together with the General Conditions and unless the context otherwise requires, such defined terms used in this Design and Website Development Terms shall have the same meaning as those in the General Conditions and vice versa.
- 1.2 In the event if any inconsistencies between the General Conditions and this Design and Website Development Terms, the provisions in this Design and Website Development Terms will prevail.
- 1.3 Continental Limited may trade under the name of Webnetism and these terms apply equally to both names.

2. DEFINITIONS:

- 2.1 In this Design and Website Development Terms:
 - 2.1.1 **'Acceptance Test'** means the acceptance test set out in the Brief.
 - 2.1.2 **'Client Content'** means any text, graphics, logos, photographs, images, moving images, sound, illustrations and other material featured or displayed which are not owned by Continental or its licensors and which the Client provides and/or specifically requests Continental to incorporate into and/or upload onto the Client Website.
 - 2.1.3 **'Client's Website'** means the website written in HyperText Markup Language or other world wide web-compatible language with pages linked using the hypertext transfer protocol which is fully readable by world wide web users using the web browsers agreed in the Brief.
 - 2.1.4 **'Content'** means all text, graphics, logos, photographs, images, moving images, sound, illustrations and other material features, displayed or used on the Client's Website. This unless otherwise stated, shall include the Client Content.
 - 2.1.5 **'Correction'** means any and all corrections or fixes made to the Software and/or the Client's Website or any part of it as the context requires that are necessary to correct or remove any bug, malfunction or other defect in it so as to ensure that the Client's Website or any part of it substantially conforms to the functional specifications detailed in the Brief.
 - 2.1.6 **'Design Fees'** means the fees payable by the Client for the Design Services performed by Continental as specified in the Brief.
 - 2.1.7 **'Design Services'** means the design services specified in the Brief.
 - 2.1.8 **'Documentation'** means the user manuals, technical documentation and training manuals in human readable form to enable a reasonably skilled computer operator to run the Client's Website.
 - 2.1.9 **'Intellectual Property'** means all intellectual property rights wherever in the world arising, whether registered or unregistered (and including any application), including copyright, know-how, confidential information, trade secrets, business names and domain names, trademarks, service marks, trade names, patents, petty patents,

utility models, design rights, semi-conductor topography rights, database rights and all rights in the nature of unfair competition rights or rights to sue for passing off.

- 2.1.10 **‘Search Optimisation Fees’** means the fees payable in respect of the Search Optimisation Services performed by Continental for the Client as specified in the Brief.
- 2.1.11 **‘Search Optimisation Services’** means the website search optimisation services specified in the Brief which Continental will perform for the Client.
- 2.1.12 **‘Software’** means all software provided to the Client by Continental and/or its licensors in order for the Client’s Website to operate properly, efficiently and effectively on the server and on web browsers including without limitation to those specified in the Brief.
- 2.1.13 **‘Support and Maintenance Services’** means the support and maintenance services defined in Clause 8.1 of this Design and Website Development Terms.
- 2.1.14 **‘Support and Maintenance Fees’** means the fees payable in respect of the Support and Maintenance Services as specified in the Brief.
- 2.1.15 **‘User Training’** means the training specified in the Brief to be provided by Continental to the Client to enable a reasonably skilled employee of the Client to operate and use the Client’s Website and the Software.
- 2.1.16 **‘Web Development Fees’** means the fees payable in respect of Web Development Services.
- 2.1.17 **‘Web Development Services’** means the web development services performed by Continental to create and develop the Client’s Website as specified in the Brief.

3. APPOINTMENT OF CONTINENTAL

- 3.1 The Client appoints Continental to carry out the Design Services, the Web Development Services, Support and Maintenance Services and/or Search Optimisation Services (as the case may be) and Continental accepts such appointment.

4. DESIGN SERVICES

- 4.1 In consideration of the Design Fees, Continental will carry out the Design Services set out in the Brief using reasonable skill and care.
- 4.2 Upon receipt of the draft design work created by Continental for the Client, the Client will provide detailed feedback on whether any changes are required to such draft design work. Unless otherwise set out in the Brief, where changes are required, such changes shall be chargeable by Continental at Continental’s then applicable hourly rates.
- 4.3 Where changes are required by the Client the procedure to agree any changes to the Design Services shall be as set out in Clause 9 of the General Conditions i.e. the Variation Clause. Upon being satisfied with such draft design provided by Continental, the Client shall confirm in writing that the Client accepts the design arising from the Design Services performed by Continental.
- 4.4 Notwithstanding Clause 4.3 of this Design and Website Development Terms, the Client shall be deemed to have accepted any design work which Continental prepares for the Client if the Client uses such design work for any of its business purposes.

- 4.5 Where the Client is not satisfied with the design work despite Continental's attempts to meet's the Client's expectation, the Client shall be entitled to terminate the relevant Contract but shall be liable to pay Continental for all work and time spent by Continental up to the date of termination at Continental's then applicable hourly rates. For the avoidance of doubt, the Client shall not be entitled to use the draft design work submitted by Continental to the Client in the event the relevant Contract is terminated pursuant to this Clause 4.5.

5. WEB DEVELOPMENT SERVICES

- 5.1 Continental undertakes with effect from the Commencement Date:
- 5.1.1 to design, write and/or supply the Software and (subject to Clause 5.2) the Content to enable the Client's Website to perform functionally and conform substantially with the functional specifications set out in the Brief.
 - 5.1.2 where agreed in the Brief, to provide the User Training to employees of the Client so that they acquire the skill, experience and knowledge required by suitably qualified persons in order to operate the Client Website;
 - 5.1.3 where agreed in the Brief, to provide the Client with the Documentations; and
 - 5.1.4 to perform the Web Development Services with reasonable care and skill in order to develop and design the Client Website to substantially meet the specifications set out in the Brief.
- 5.2 The Client shall deliver to Continental the Client Content in such format as may be agreed by the Parties. The Client shall ensure that the Client Content information is accurate, not unlawful or illegal and does not infringe the intellectual property rights of any third parties and to this end, the Client will indemnify and hold harmless Continental for any loss, damages and/or claims brought against Continental.
- 5.3 Continental grants the Client a non-exclusive licence to use the Software (and any customisation to the Software) for the purposes set out in the Brief.
- 5.4 Continental grants the Client a non-exclusive licence the use any Content developed by Continental on the Client's Website (excluding Client Content).
- 5.5 Upon passing the Acceptance Test and acceptance by the Client of the Client's Website in accordance with Clause 7 of this Design and Website Development Terms, Continental warrants that the Software and Client's Website will substantially comply with the functional specifications specified in the Brief for a period of 60 days or such other periods as may be specified in the Brief ('Warranty Period'). To this end, Continental will carry out such Correction without any additional charges to the Client during the Warranty Period. For the avoidance of doubt, any unauthorised modifications, use or improper installation of the Client's Website and/or Software by the Client shall render all Continental's warranties and support obligations null and void.
- 5.6 Notwithstanding Clause 5.5 of this Design and Website Development Terms, Continental denies any implied or express representation that the Software and/or the Client's Website will be fit:
- 5.6.1 to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the Brief as being compatible with the Software and/or the Client Website;
 - 5.6.2 to operate uninterrupted or error-free; or

- 5.6.3 to have all program defects corrected.
- 5.7 If the Software and/or Content (excluding Client Content) (as the case may be) becomes or, in the opinion of qualified legal counsel, is likely to become the subject of any Intellectual Property rights claim by third parties, the Client will permit Continental :
 - 5.7.1 to replace all or part of the Software and/or Content (excluding Client Content) (as the case may be) with something functionally equivalent without any charge to the Client;
 - 5.7.2 to modify the Software and/or Content (excluding Client Content) (as the case may be) as necessary to avoid such claim, provided that the Software and/or Content (excluding Client Content) (as the case may be) (as amended) functions in substantially the same way as the Software and/or Content (excluding Client Content) (as the case may be) before modification; and/or
 - 5.7.3 to procure for the Client a licence from the relevant complainant to continue using the Software and/or Content (excluding Client Content) (as the case may be).
- 5.8 Subject to Clause 10 of this Design and Website Development Terms, if Software and/or Content (excluding Client Content) (as the case may be) is determined in a court of law to be infringing and Continental is unable after commercially reasonable efforts to procure for the Client the right to continue using the Software and/or Content (excluding Client Content) (as the case may be), or to provide the Client with functionally equivalent non-infringing software and/or Content (excluding Client Content) (as the case may be), the relevant Contract and any licence to use the Software and/or Content (excluding Client Content) (as the case may be) shall be terminated and Continental will refund the Client the Development Fees.
- 5.9 Without prejudice to Clause 10 of this Design and Website Development Terms, Continental shall have no liability for any claim of intellectual property infringement:
 - 5.9.1 caused by the Client's use of the Software and/or Content (excluding Client Content) (as the case may be) in combination with software and/or Content (excluding Client Content) (as the case may be) not supplied or approved in writing by Continental (other than the operating system of any of the Client's hardware specified in the Brief);
 - 5.9.2 resulting from any unauthorised modification of the Software and/or Content (excluding Client Content) (as the case may be); or
 - 5.9.3 where the claim for infringement arises in respect of a feature of the Software and/or Content (excluding Client Content) (as the case may be) which was specifically requested by the Client as specified in the Brief.
- 5.10 Where the Client requires changes to Web Development Services and/or the functional specifications specified in the Brief, such changes shall be agreed pursuant to the procedure specified in Clause 9 of the General Conditions i.e. the Variation Clause.

6. SEARCH OPTIMISATION SERVICES

- 6.1 Continental undertakes to provide the Search Optimisation Services for the Client in accordance with the Brief using reasonable skill and care.
- 6.2 The Client warrants that it owns and/or is duly licensed to use any Intellectual Property in the trade marks, trade names and any descriptions and/or information of its product and/or services which it provides its customers and agrees to indemnify and hold harmless

Continental for any losses and/or damages suffered by Continental if the use of the aforesaid by Continental as part of the Search Optimisation Services infringes the Intellectual Property rights of any third parties.

- 6.3 While Continental will use reasonable care and skill in providing the Search Optimisation Services, Continental does not warrant that any descriptions, meta tags or content used by Continental ('Continental's Content') in order to optimise the Client's Website do not infringe the Intellectual Property rights of third parties. In this regard, the Client is solely responsible to verify that Continental's Content does not infringe the Intellectual Property rights of any third parties and where appropriate, obtain legal advice on the same. Where Continental's Content infringes the Intellectual Property rights of any third parties, the Client shall inform Continental of such infringement forthwith and Continental will remove such Continental's Content as soon as possible. The Client agrees that this will be the Client's sole remedy in respect of intellectual property rights infringement with regard to Continental's Content.
- 6.4 The Client acknowledges that the effectiveness of the Search Optimisation Services is dependant on various factors which are outside of Continental's control such as the state of the Client's competitors' website, the specifications of the Client's Website and the marketing strategy of the Client and choice of meta tags and descriptions used and the Client's budget in respect of search engine fees e.g. adword fees charged by Google. As such, the Client acknowledges that the due performance of the Search Optimisation Services does not guarantee that the Client's Website will enjoy a better position when searches are carried out on website search engines.

7. INSTALLATION AND ACCEPTANCE TESTING

- 7.1 Continental shall upload and/or install the developed Client's Website onto a test site when the Client's Website is ready for acceptance testing and such acceptance testing will be carried out in accordance with the Acceptance Test.
- 7.2 Continental and the Client will jointly carry out the Acceptance Test within a reasonable time frame not to exceed 14 days.
- 7.3 Where the Client's Website passes the Acceptance Test, the Client shall forthwith confirm such acceptance of the Client's Website in writing in such a form as may be reasonably requested by Continental.
- 7.4 Where the Client Website fails the Acceptance Test, Continental will carry out such Correction to ensure that the Client's Website meets the requirements set out in the Acceptance Test. Continental will have no less than 30 days to carry out such Correction. Thereafter the Parties will commence acceptance testing in accordance with the Acceptance Test.
- 7.5 Where the Client's Website passes the Acceptance Test, on the second attempt, Clause 7.3 of this Design and Website Development Terms will apply. If the Client's Website fails the Acceptance Test on the second attempt, Clause 7.4 of this Design and Website Development Terms will apply.
- 7.6 Where the Client's Website passes the Acceptance Test on the third attempt, Clause 7.3 of this Design and Website Development Terms will apply. If the Client's Website fails the Acceptance Test on the third attempt, the Client will be entitled to terminate the relevant Contract.

8. SUPPORT AND MAINTENANCE

- 8.1 Where agreed by the Parties in the Brief, Continental will carry out such Corrections and provide the Client with support and maintenance services ('Support and Maintenance

Services') in the event there are problems, faults and/or errors with regard to the Client's Website for such period specified in the Brief in question.

- 8.2 The Parties may mutually agree to renew the Support and Maintenance Services for such additional periods as may be agreed between the Parties. Unless otherwise waived by Continental, any renewals of the Support and Maintenance Services shall be made in writing.
- 8.3 Where the Client and/or the Client's users are unable to access the Client's Website, the Client shall first ascertain whether the inability to access the Client's Website is caused by a failure on the part of the Client's Website or the Client's internet service provider or server. Where fault lies with the Client's Website, the Client's authorised representative shall contact Continental immediately using the following details:
Email address: support@continental.co.uk
Telephone Number: 01452 855222
- 8.4 Upon receiving the Client's report, Continental shall use reasonable endeavours to carry out the Correction to allow the Client and its users to access the Client's Website and where applicable in accordance with the service levels set out in the Brief. Where it is subsequently established that fault does not lie with the Client's Website but with the Client's equipment or its internet connection, Continental reserves the right to charge the Client such reasonable cost as Continental may have incurred.

9. CHARGES AND PAYMENT

- 9.1 In consideration of the Design Services, Web Development Services, Search Optimisation Services and/or the Support and Maintenance Services, the Client will pay the Design Fees, the Search Optimisation Fees, the Support and Maintenance Fees and/or the Web Development Fees (as the case may be) in accordance with the Brief and the General Conditions.

10. LIMITATION OF REMEDIES AND LIABILITY

- 10.1 Nothing in this Design and Website Development Terms shall operate to exclude or limit Continental's liability for death or personal injury caused by its negligence or fraud.
- 10.2 Continental shall not be liable to the Client for any loss and/or damages suffered by the Client arising from the relevant Contract, the Search Optimisation Services, Design Services, Support and Maintenance Services and/or Web Development Services.
- 10.3 Subject to Clause 10.2 of this Design and Website Development Terms, Continental shall not be liable for any indirect or consequential losses to the Client including damage to or loss of data, loss of profit, anticipated profits, revenues, anticipated savings, goodwill or business opportunity which relate to the relevant Contract, the Search Optimisation Services, Design Services, Support and Maintenance Services and/or Web Development Services.
- 10.4 Subject to Clauses 10.1, 10.2 and 10.3 of this Design and Website Development Terms, Continental's aggregate liability in respect of claims based on the Search Optimisation Services, Design Services, Support and Maintenance Services and/or Web Development Services (as the case may be) in contract or tort (including negligence) or otherwise, shall in no circumstances exceed 100% of the total Design Fees, Search Optimisation Fees, Support and Maintenance Fees and/or Web Development Fees paid by the Client to Continental (as the case may be).

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 As between Continental and the Client, the Client retains all Intellectual Property rights in the Client Content and grants Continental a licence to use such Intellectual Property rights to the extent required by Continental to perform its obligations pursuant to the applicable Contract.
- 11.2 As between Continental and the Client, all Intellectual Property rights in the Software and any other Content other than Client Content arising in connection with the performance of the Search Optimisation Services, Design Services and/or Web Development Services shall belong to Continental and/or its licensors.
- 11.3 Subject to Clauses 5.7, 5.8 and 5.9 of this Design and Website Development Terms, Continental shall defend, hold harmless and indemnify the Client against all loss, damage, claims, liabilities, fees, costs and expenses arising out of any action brought against the Client based on a claim that the Software and Content other than Client Content infringes any intellectual property right of any third party, provided that:
- 11.3.1 Continental is notified promptly in writing of any such claim;
 - 11.3.2 the Client makes no admission or settlement of such claim without Continental's prior written consent;
 - 11.3.3 Continental has sole control of the defence and any negotiations for compromise; and
 - 11.3.4 the Client provides, at Continental's expense, such assistance as Continental reasonably requires.

12. TERMINATION

- 12.1 Without prejudice to any other rights or remedies which the Parties may have, either party may terminate the relevant Contract without liability to the other if:
- 12.1.1 the other Party fails to pay any amount due under such Contract on the due date for payment and remains in default not less than 7 days after being notified in writing to make such payment;
 - 12.1.2 the other Party commits a material breach of any of the terms of the relevant Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 12.1.3 is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of effecting a reconstruction or amalgamation in such manner that the company resulting from such reconstruction or amalgamation if a different legal entity shall agree to be bound by and assume the obligations of the relevant party under the relevant Contract) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed of its assets or ceases for any reason to carry on business or takes or suffers any similar action which in the opinion of the party giving notice means that the other may be unable to pay its debts.
- 12.2 On termination of a Contract for any reason the Client shall immediately pay to Continental all of Continental's outstanding unpaid invoices and interest and, in respect of any services supplied but for which no invoice has been submitted, Continental may submit an invoice, which shall be payable immediately on receipt.

The accrued rights and liabilities of the Parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.