



Terms and Conditions of Supply of Services

Version 2.1, 25th July 2022

These terms and conditions set out the basis on which we will provide our services to you and your attention is particularly drawn to the provisions of clause 7 which limit our liability to you in certain circumstances.

1. Interpretation

1.1 Definitions:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

Cast from Clay: 25-28 Limited, trading as "Cast From Clay", a company registered under number 10385315 in England and Wales with its registered office at Raedan, 71-75 Shelton Street, London WC2H 9JQ, United Kingdom;

Client: the person, company or firm who purchases Services from Cast from Clay;

Conditions: these terms and conditions as may be amended from time to time in accordance with clause 10.5;

Contract: the contract between Cast from Clay and the Client for the supply of Services in accordance with these Conditions;

Deliverables: the deliverables set out in the Proposal to be delivered by Cast from Clay as part of the Services including, to the extent applicable, any reports or other written materials or text, or any content, designs, layouts, images video, graphics or website architecture;

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Price or Pricing: the charges payable by the Client for the supply of the Services as provided for in the Proposal or otherwise agreed in writing by the Client excluding any Third Party Costs;

Proposal: the document issued by Cast from Clay to the Client which sets out the Services including any Deliverables;

Services: the services, including any Deliverables, supplied or to be supplied by Cast from Clay to the Client as set out in the Proposal or as is otherwise agreed in writing by Cast from Clay in connection with the Proposal;

Specification: any specification provided for in the Proposal or otherwise that is agreed in writing with the Client for the Services;

Third Party Costs: all third party costs and expenses incurred by Cast from Clay in providing the Services and which are to be borne by the Client as provided for in the Proposal or otherwise agreed by the Client including any licence fees payable to the providers of any third party content or for the use of any third party software or service.

1.2 Interpretation:

- a) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- b) Any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- c) A reference to writing or written includes email.

1.3 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.

1.4 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

2. Basis of contract

2.1 These Conditions together with the Proposal constitute the contract between the Client and Cast from Clay for the provision of the Services.

2.2 The Proposal and these Conditions shall be deemed to be accepted when the Client either confirms its acceptance of the Proposal in writing (including by way of email) or pays any advance or initial payment required under the Proposal at which point and on which date the Contract shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by Cast from Clay, and any descriptions or illustrations contained in the Proposal or in Cast from Clay's catalogues or brochures or on its website, are issued or published for the sole purpose of giving an approximate idea of the services described in them as provided by Cast from Clay. They shall not form part of the Contract or have any contractual force.

- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Cast from Clay including in the Proposal is only valid for a period of 20 Business Days from its date of issue (or period as otherwise provided in the Proposal) and accordingly shall not be capable of acceptance by the Client after the end of that period.
3. Supply of services
 - 3.1 Cast from Clay shall supply the Services to the Client in accordance with the terms of the Contract and on the basis that the Services will comply with any applicable Specification in all material respects.
 - 3.2 Subject to the Client's compliance with its obligations under clause 4, Cast from Clay shall use reasonable endeavours to provide the Services by any target date(s) or milestone(s) provided for in the Proposal or otherwise agreed in writing with the Client but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
 - 3.3 If any specific dates or times are set out in the Proposal or otherwise agreed in writing with the Client for any meetings, training sessions, briefings or presentations Cast from Clay reserves the right to re-schedule, without liability on its part, any such events to the extent that it or its staff are unable to attend or participate on the agreed date or time. If Cast from Clay has to re-schedule any such event it shall provide the Client with as much notice as is reasonably practicable of the need to do so and provide an alternative date(s) for any re-scheduled event as soon as it is able to do so.
 - 3.4 Cast from Clay shall have the right to make any changes to the Services which are necessary to comply with any applicable law or which do not materially affect the nature or quality of the Services.
 - 3.5 Cast from Clay warrants to the Client that the Services will be provided using reasonable care and skill.
 - 3.6 The Client shall be fully responsible for any issues that may arise as a result of any changes that the Client (on any third party on behalf of the Client) makes to any of the Services and which the Client agrees may give rise to additional charges being payable to Cast from Clay in accordance with clause 5.3.
 - 3.7 All conditions, warranties or other terms concerning the Services which might otherwise be implied into the Contract (whether by statute or otherwise) are hereby expressly excluded to the fullest extent permissible in law.
4. Client responsibilities
 - 4.1 The Client shall:

- a) co-operate with Cast from Clay and provide access to appropriate staff of the Client in all matters relating to the Services to the extent reasonably required by Cast from Clay in order for it to provide the Services;
- b) provide Cast from Clay with any information and materials including texts and images that the Client may require are included in any Deliverables in a timely manner and in such format as Cast from Clay may reasonably require in order to supply the Services and ensure that all information provided by the Client to Cast from Clay is accurate in all material respects;
- c) ensure that all instructions provided by the Client to Cast from Clay in connection with the Services are clear and accurate;
- d) if the Services comprise website design, obtain and maintain all necessary licences, permissions and consents which may be required for the operation of the website and ensure that such website at all times complies with all relevant legislation;
- e) review Cast from Clay's work and provide feedback and sign-off in a timely manner and within any time periods set out in the Proposal or agreed in writing with Cast from Clay;
- f) make payment to Cast from Clay of all amounts payable to it under the Contract, including on account of the Price and any Third Party Costs, such payments to be made in accordance with any payment schedule provided for in the Proposal or otherwise agreed in writing by Cast from Clay or otherwise as provided for in these Conditions;
- g) if applicable, provide images or photographs that the Client requires to be used in any Deliverable in such digital format and with such resolution as Cast from Clay may reasonably require in order to ensure that such images photography can be re-sized and displayed in the intended Deliverable(s) to the best effect;
- h) provide all of the documentation, information and sign-offs referred to above as soon as reasonably required by Cast from Clay and the Client acknowledges and agrees that any delay on its part will cause a delay on Cast from Clay's part to provide the Services and may lead to additional charges being made by Cast from Clay to the extent that it incurs any lost or wasted time;
- i) advise in advance and in writing of any confidential information to be presented to Cast from Clay (whether by email or otherwise) and ensure that all such information is clearly marked as "confidential"; and
- j) ensure that it keeps back-up copies of any data or information provided by it to Cast from Clay.

4.2 If Cast from Clay's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or any third party engaged by it or failure by the Client to perform any relevant obligation:

- a) Cast from Clay shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies such default or carries out the relevant act or omission, and to rely on the same to relieve it from the performance of any of its obligations;
- b) Cast from Clay shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Cast from Clay's failure or delay to perform any of its obligations as set out in this clause 4.2;
- c) Cast from Clay reserves the right to raise additional charges for any lost or wasted time or costs or expenditure that it or its staff suffer or incur as a consequence of any act or omission on the part of the Client such additional charges to be in accordance with such rates as the parties have agreed in writing or, in the absence of such agreement, on the basis of Cast from Clay's standard daily fee rates as notified to the Client from time to time.

5. Price

5.1 The Price for the Services is set out in the Proposal or is as otherwise agreed in writing by Cast from Clay with the Client.

5.2 The Price shall be paid by the Client at:

- a) the times provided for in the Proposal or as may otherwise be agreed in writing by Cast from Clay; or
- b) if no time for payment is set out in the Proposal or otherwise agreed in writing by Cast from Clay:
 - (i) if the Price relates to a Deliverable, a sum equal to 50% of the Price shall be paid immediately upon the Client's acceptance of the Proposal, a sum equal to 30% of the Price shall be paid on the Business Day prior to the delivery of the Deliverable and the remaining 20% shall be paid within 30 days after delivery of the Deliverable; and
 - (ii) if the Price relates to the provision of other services, when payment is due in accordance with clause 5.6.

5.3 If Cast from Clay provides any services other than the Services provided for in the Proposal or if the parties agree any variation to the Services or to any Specification then additional charges shall be payable by the Client either in accordance with such rates as the parties have agreed in writing or, in the absence of such agreement, on the basis of Cast from Clay's standard daily fee rates as notified to the Client from time to time.

5.4 In addition to the Price Cast from Clay shall:

- a) invoice the Client for any Third Party Costs upon being incurred by Cast from Clay or, if agreed by the Client, in advance of being incurred by Cast from Clay; and
 - b) be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Cast from Clay engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Cast from Clay for the performance of the Services, and for the cost of any materials provided that no such charges shall be payable by the Client unless they have been approved in advance by the Client either specifically or by reference to their general nature and subject to any policy the Client may have in respect of the incurring of such expenses.
- 5.5 Cast from Clay shall invoice the Client for the Price and any other amount payable by the Client for the provision of the Services in accordance with any agreed payment schedule and in advance of payment being due or, if no payment schedule has been agreed, on a monthly basis by reference to the Services performed in each month.
- 5.6 The Client shall pay each invoice submitted by Cast from Clay:
- a) within 7 days of the date of the invoice or, if later, by the due date for payment of the relevant invoiced amount; and
 - b) in full and in cleared funds to a bank account nominated in writing by Cast from Clay, and time for payment shall be of the essence of the Contract.
- 5.7 All amounts provided for in the Proposal or that are otherwise referred to in any correspondence or communications with the Client as being payable to Cast from Clay on account of the Services are exclusive of VAT and the Client shall, subject only to receipt of a valid VAT invoice from Cast from Clay, pay to Cast from Clay such additional amounts in respect of VAT as are chargeable on the amounts invoiced by Cast from Clay for the Services such payment on account of VAT to be made at the same time as payment is due for the relevant charges that are invoiced for the supply of the Services.
- 5.8 If the Client fails to make any payment due to Cast from Clay under the Contract by the due date for payment, then the Client shall pay interest on the overdue amount at the rate of 5% per cent per annum above the base rate from time to time of NatWest Bank plc. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount.
- 5.9 The Client shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Cast from Clay may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by Cast from Clay to the Client.
6. Intellectual property rights

- 6.1 All Intellectual Property Rights in or arising out of or in connection with the Services that are created or developed by Cast from Clay ("CFC Created IPRs") shall be owned by Cast from Clay. Subject to the Client paying the full Price due to Cast from Clay under the Contract for the Services Cast from Clay shall grant to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable and fully transferrable licence to use copy and modify CFC Created IPRs for the purpose of receiving and using the Services and the Deliverables.
- 6.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights, the Client's use of any such Intellectual Property Rights is conditional on Cast from Clay obtaining a written licence from the relevant licensor on such terms as will entitle Cast from Clay to license such rights to the Client.
- 6.3 The Client grants Cast from Clay a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Client to Cast from Clay for the purpose of providing the Services.
- 6.4 The Client hereby warrants that it owns all of the Intellectual Property Rights in all texts, images, photographs, designs, artworks, trade names and other material provided by the Client for inclusion in any of the Deliverables or has all appropriate licences to use such material in the way that the Client intends to use them. The Client shall indemnify and keep indemnified Cast from Clay from and against all costs expenses losses and liabilities which Cast from Clay may in anyway suffer or incur as a result of or in connection with any such material infringing or alleging to infringe the Intellectual Property Rights of any third party.
7. Limitation of liability: The Client's attention is particularly drawn to this clause.
- 7.1 Nothing in the Contract shall limit or exclude Cast from Clay's liability for:
- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - b) fraud or fraudulent misrepresentation; or
 - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.
- 7.2 Subject to clause 7.1, Cast from Clay shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- a) loss of profits;
 - b) loss of sales or business;
 - c) loss of agreements or contracts;

- d) loss of anticipated savings;
- e) loss of use or corruption of software, data or information;
- f) loss of damage to goodwill; and
- g) in each of the above cases, whether such losses arise directly or indirectly or for any indirect or consequential loss.

7.3 Subject to clause 7.1, Cast from Clay's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 50% of the total Price paid under the Contract.

7.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

7.5 This clause 7 shall survive termination of the Contract.

8. Termination

8.1 Either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- b) the other party enters administration, liquidation or any composition or arrangement with its creditors, is wound up, has a receiver appointed to any of its assets or ceases to carry on business or any analogous procedure in respect of the foregoing occurs in any other jurisdiction in relation to that party;
- c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

8.2 Without limiting its other rights or remedies, Cast from Clay may terminate the Contract with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Contract on the due date for payment and remains in default 10 Business Days after being notified to make such payment.

8.3 Without limiting its other rights or remedies, Cast from Clay may suspend provision of the Services under the Contract if the Client is in breach of the terms of the Contract or is subject to any step or action in connection with the matters referred to in clauses 8.1(b) or 8.1(c) or Cast from Clay reasonably believes that the Client is about to become subject to any of them, or if the Client fails to pay any amount due under this Contract by the due date for payment.

8.4 Without limiting its other rights or remedies, Cast from Clay may, without liability to the Client, terminate the Contract on 30 days' prior notice in writing to the Client if any of the Client's staff or representatives are, in the reasonable opinion of Cast from Clay, responsible for any offensive or inappropriate conduct towards any of Cast from Clay's staff.

9. Consequences of termination

On termination of the Contract for any reason:

- a) the Client shall immediately pay to Cast from Clay all of Cast from Clay's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Cast from Clay shall submit an invoice for the relevant Services calculated by reference to such rates as the parties have agreed or, in the absence of such agreement, on the basis of Cast from Clay's standard daily fee rates as notified to the Client from time to time, and which shall be payable by the Client immediately on receipt;
- b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- c) clauses which expressly or by implication survive termination shall continue in full force and effect.

10. General

10.1 Force majeure. Cast from Clay shall not be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control including without limitation any telecommunication problems, software failures, hardware failures, third party interference, any act or omission of a third party, any industrial strike, riot, terrorism, epidemic or pandemic or any government action taken in respect thereof, any change in law or other action taken by any government or public authority, or any act of God.

10.2 Assignment and other dealings.

- a) Cast from Clay may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- b) Save as provided in clause 6.1 The Client shall not, without the prior written consent of Cast from Clay, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

10.3 Confidentiality.

- a) Each party undertakes that it shall not at any time during the term of the Contract, and for a period of two years after termination of the Contract or the date on which Cast from Clay last provides the Services, disclose to any person any Confidential Information, except as permitted by clause 10.3(b). In this clause Confidential Information means any information supplied by one party to the other during the performance of this Contract and which has been expressly marked as “Confidential”.
- b) Each party may disclose the other party's Confidential Information:
 - (i) to its employees, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10.3; and
 - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

10.4 Entire agreement.

- a) The Contract constitutes the entire agreement between the parties in relation to the provision of the Services and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

10.5 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

10.6 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy or prevent or restrict the further exercise of that or any other right or remedy.

10.7 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any

modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

10.8 Notices.

- a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at such address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post and also by email. All notices to Cast from Clay must be sent to Tom Hashemi at tom.hashemi@castfromclay.co.uk. A notice or other communication shall be deemed to have been received one Business Day after transmission.
- b) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

10.9 Third parties. No one other than a party to the Contract shall have any right to enforce any of its terms.

10.10 No partnership or agency. The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in the Contract. Neither party shall have, nor represent that it has, any authority to make any commitments on the other party's behalf.

11. Data protection

11.1 In this clause 11:

- a) Controller, personal data, and processing: have the meanings set out in the Data Protection Legislation.
- b) Data Protection Legislation: means all applicable data protection and privacy legislation in force from time to time in the UK including, to the extent applicable, the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);
- c) Shared Personal Data: means any personal data provided by the Client to Cast from Clay in connection with the provision of the Services.
- d) UK GDPR: has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

11.2 To the extent that the Client provides personal data to Cast from Clay in connection with the provision of the Services Cast from Clay shall be the controller

of that data while held by it and accordingly shall comply with all of its obligations as controller of that personal data under Data Protection Legislation.

11.3 Cast from Clay undertakes to the Client:

- a) only to process Shared Personal Data for the purposes of performing the Services; and
- b) at the written direction of the Client, delete or return Shared Personal Data and copies thereof to the Data Discloser on request subject to any legal obligation on Cast from Clay to retain Shared Personal Data for any period of time.

11.4 The Client shall ensure that it has all necessary notices and consents and lawful bases in place to enable the lawful transfer of Shared Personal Data to Cast from Clay.

12. Further terms relating to website design services

12.1 All websites are developed by Cast from Clay to work primarily across major browsers and platforms including devices such as mobile phones and tablets at the time that Cast from Clay completes its work on the website.

12.2 Cast from Clay warrants that the any website developed by it will perform substantially in accordance with its Specification for a period of three months from being approved by the Client Acceptance and if the website does not so perform, Cast from Clay shall, for no additional charge, carry out any work necessary in order to ensure that the Website substantially complies with its Specification.

12.3 The warranty set out in clause 12.2 shall not apply to the extent that any failure of the website to perform substantially in accordance with its Specification is caused by any the content provided to Cast from Clay by the Client from time to time for incorporation in the website.

12.4 Cast from Clay does not warrant that:

- a) the Client's use of the website will be uninterrupted or error-free; or
- b) the website will be free from any weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability.

12.5 Save as provided in clause 12.2 Cast from Clay gives no representation or warranty as to the future performance of the website and Cast from Clay does not guarantee complete and/or continued compatibility of the website with any browser, platform

or device including as a consequence of future updates and upgrades by their respective vendors nor does Cast from Clay guarantee compatibility for old or redundant browser software or devices.

- 12.6 The Client acknowledges and agrees that the Price has been calculated on the basis that during the design phase there are no more than three revisions to the website design and if Cast from Clay is asked to prepare more revisions to any of the designs then additional charges will be payable for such revisions in accordance with clause 5.3.

- 12.7 The Client agrees that Cast from Clay is not liable for any bugs, performance issues or failure of the WordPress content management system (or any other open-source content management system which in this clause is referred to as “Third Party Software”) which is open-source software distributed under the General Public Licence and is maintained and developed by a community of users and developers. If there are any such bugs or performance issues or failures in any Third Party Software then Cast from Clay will refer such matter to the relevant development community for such Third Party Software but shall not have any other liability or responsibility for any such matters.

- 12.8 If any changes to the website that are required or made by the Client (or any third party on behalf of the Client) result in any functionality errors and Cast from Clay is asked to rectify such errors then additional charges shall be payable for such work in accordance with clause 5.3.