

Definitions

“Background Intellectual Property” = any Intellectual Property, other than Foreground Intellectual Property, which is used in performing any Project.

“Charges” = the charges paid for by you for the Project.

“Contract” = These terms and conditions (this document) together with the Proposal.

“Content” = any text, graphics/images, photos, designs, trademarks, or other artwork or information that you provide to us for inclusion in the web site.

“Foreground Intellectual Property” = any copyright or design rights in the website which arise during the course of us completing the Project for you and are visible to the naked eye by online visitors to such website. For the avoidance of doubt this shall not include any software or source code.

“Intellectual Property” = 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 including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights 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.

Party = Refined Marketing or you.

“Project” = the work you have engaged us to perform as agreed and set out in the Proposal.

“Proposal” = the proposal document prepared by Refined Marketing for you setting out the details of the Project, including the schedule and statement of work.

“We”, “us”, “our” = Refined Marketing.

“Working Day” = a day (other than a Saturday, Sunday or public holiday)

“Client”, “You” or “Your” = you, the company that has contracted with Refined Marketing for a Project.

Project initiation

Initially we will work together to prepare a Proposal which you are happy with.

You shall be responsible for checking the accuracy of the Proposal and that this covers all details of the Project you would like us to complete.

The details in the Proposal are valid provided that you instruct us to commence work on the Project within 28 days from the date of issue of the Proposal.

We will let you have a quotation (“Quotation”) for completing the Project on the basis set out in the Proposal.

Our Quotations are valid for 28 days from the date of issue.

We will issue a written acceptance to you acknowledging your instructions for us to commence work on the Project and we will only begin work once:

- a) Either a Purchase Order has been received (if the client use Purchase Orders) or the Refined Marketing Sales Order is signed; or

- b) Initial payment has been received.

Payment terms

Payment Terms will be highlighted within the respective Proposal and will detail whether we will invoice you on completion of the Project or monthly in arrears. In any case:

For standalone projects you shall pay each invoice submitted by us:

- a) Within 14 days of the date of the invoice; and
- b) In full and cleared funds to a bank account nominated in writing by us.
- c) If project is £500 and above we would require a 50% upfront deposit. Final payment due on 14 days invoice once project is delivered.

For monthly retainers:

- a) 3 months minimum and first two months shall be paid prior to the start of the retainer agreement. Subsequent months shall be paid on the 1st of each month.
- b) Amounts to be paid in full and cleared funds to a bank account nominated in writing by us.

Refined Marketing reserves the right to put work on hold if payments are delayed, until such time as payment is received and cleared within the Refined Marketing bank account.

If work carried out by Refined Marketing is submitted for review at any stage and feedback has not been submitted by you for ten Working Days, Refined Marketing may invoice for any remaining monies to bring payments up to date. If you are in credit at such a stage then Refined Marketing will await further instructions (unless any other agreement has been made to proceed in this or any other area).

Without limiting any of our other rights, if you fail to make any payment due to us under this Contract by the due date for payment ("Due Date"), we shall have the right to charge interest on the overdue amount at the rate of 2% per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

Unless otherwise agreed (in writing) and confirmed within the Refined Marketing sales order; standard payment terms will be in force. 40% of Project value due on Project initiation and prior to work commencing. 40% of Project value due on completion of 50% Project milestone. 20% of total Project value due on completion of 100% Project milestone.

Where we are providing an ongoing service to you, please note that we reserve the right to increase our standard charges, provided that such charges are not increased more than once in any 12 month period. We will give you notice of any such increase, 2 months before the proposed date of the increase. If such increase is not acceptable to you, you shall notify us in writing within 4 weeks of the notice and we shall have the right to terminate this Contract by giving 4 weeks' written notice to you.

Cancellation

Cancellation can only be accepted in writing by either party in accordance with the terms as set out in the Sales Order. It cannot be back-dated.

At the time of cancellation, any outstanding monies will need to be paid for by you in accordance with the terms as set out within the sales order. You therefore commit to pay Refined Marketing in accordance with those terms.

In all cases, where you owe monies at the time of cancellation, you commit to pay the outstanding monies owed within seven Working Days.

At the time of cancellation, if under those terms Refined Marketing owes any refund, then Refined Marketing commits

to refund monies owed within ten Working Days.

Refined Marketing will provide you with details of all work carried out in reaching settlement, and will hand over all work completed up until the settlement date once payment has been settled within ten Working Days.

Upon cancellation of contract by the client, Refined Marketing will issue the client with a final invoice which shall be due within 7 Working Days and include:

- a) All outstanding charges due in accordance with payment terms.
- b) Plus 50% of outstanding Project balance (all charges not yet invoiced)

Where the client cancels or requests rescheduling of services during contract period the following clauses shall apply:

- a) A cancellation of 50% of service cost will be payable for services cancelled within 14 days of the scheduled date.
- b) A cancellation fee of 100% of the service cost will be payable for services cancelled within 7 days of the scheduled date.
- c) A cancellation fee of 100% of the service cost will be payable where, within 7 days of the schedule date, the client requests a reschedule of services, unless Refined Marketing is able to re-deploy the scheduled resources elsewhere.

Scheduling and delivery

We will complete the Project in line with the Proposal in all material respects; Where you request work which is outside of the Proposal (such as additional revisions) this will be chargeable at our standard daily fee rates and we will let you have an estimate before beginning such additional work.

Refined Marketing understands how important deadlines are and will work extremely hard to achieve your deadlines. However, whilst Refined Marketing will always do its very best to deliver to an agreed deadline, we cannot absolutely guarantee delivery dates agreed and will not be liable for any delay in completing a Project.

Any time or date named by Refined Marketing is given and intended as an estimate. If Refined Marketing foresees any delay in the programme due to Refined Marketing, we will inform you of that delay at the earliest opportunity. Refined Marketing will not be liable under any circumstances, in particular for costs incurred, compensation or loss of earnings due to any failure to meet timescales for a Project.

Where we require you to provide Content or feedback to us, you accept all responsibility for the timely and accurate provision of such Content or feedback and we shall not be liable for any delays in the Project caused by inaccuracies in the Content supplied, or your failure to supply the Content in line with the Proposal or the feedback in accordance with the specified dates.

We shall not be responsible for any delays in performing, or any failure to perform, any of our obligations under this Contract if the delay or failure was due to any cause beyond our reasonable control.

We do not guarantee that the functions contained in any work will always be error-free or uninterrupted.

Where you have engaged us to provide SEO services to you, we will use reasonable endeavours to improve your search rankings but due to the nature of this area, we are unable to provide any guarantee as to the improvement in your rankings.

One each Project has been agreed and signed off by you in writing, that Project is deemed to be completed ("Sign-Off"). Any further amendments required following Sign-Off will be chargeable in accordance with our standard daily fee rates.

Intellectual property

All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has derived).

For the avoidance of doubt nothing in this section shall affect:

The ownership of any intellectual Property Rights within your images/brand etc which shall remain your property or the property of your licensor (where such elements used are only licensed to you); or

Our ownership of any intellectual property rights which are found in our materials, equipment, documents and other property or software.

Subject to the other points in this section, any Foreground Intellectual Property Rights will be assigned to you absolutely on receipt of your cleared final payment in respect of the Project. Until that time, the Intellectual Property Rights relating to work carried out under the Contract shall belong to us.

By providing any Content to us, you guarantee that you own or have permission to use such Content and you shall reimburse us on written demand for any costs or losses which we incur as a result of any third party infringement claims made in connection with the Content.

Limitations and liability

Subject to the final point in this section, we shall under no circumstances whatsoever be liable to you or any third party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of, use of, damage to or corruption of any data, information or software, business interruption, loss of profit, sales, revenue or turnover, loss of any contract, loss of or damage to reputation or goodwill or for any indirect, consequential or special losses or damages which may be suffered by you in connection with this Contract.

Subject to the final point in this section, where we have delivered the solution to agreed specification and the client subsequently transfers the delivered solution to an alternative environment we shall no longer be liable for any errors or failures caused by the said transition.

Subject to the final point in this section, where we have provided ongoing maintenance of the clients content management system we shall only be responsible for updating and maintaining the third party updates and plugins as recommended or enforced by the content management system vendor. Where such updates may cause issue the company shall under no circumstances be liable as detailed in point one of this section.

Subject to the final point in this section, our total liability to you in respect of all other losses arising in connection with a Project under this contract whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the Charges paid by you to date at which liability is inferred for the Project.

Nothing in these terms shall limit or exclude our liability for death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors; or for fraud or fraudulent misrepresentation.

All websites, from the launch date are subject to 30 days warranty. Any issues or faults after this period will be subjected to a fee to fix.

Except as set out in these terms, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded.

Privacy and confidentiality

Refined Marketing will not share or sell any of your details with third party companies without your express written permission.

Refined Marketing will not use your corporate name or brand in any marketing activities without your express written permission.

During the term of the Contract and thereafter, each party agrees to keep all information that they obtain about the other concerning the business, finances, technology and affairs of the other party, regardless of its nature, and the content of these terms ("Confidential Information"), strictly confidential.

We will treat all information and Content which you provide us with to carry out the Project as confidential until the launch of the website unless you confirm in writing that parts of this information shall remain confidential after the launch. Upon Sign-Off of the website you agree all information held on the website is approved to be released into the public domain.

Each party shall make its employees aware of the confidential nature of the Confidential Information and shall ensure that they are prohibited from copying or revealing the same unless it is strictly for the purpose of carrying out the work required for the Project.

Non-Solicitation

Neither party will, without prior written consent of the other party, during the course of the Contract or within one year of its completion, solicit, make any offer of employment, employ or engage any of the other party's consultants or employees.

Termination

Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if:

you commit any continuing or material breach of any of the provisions of these terms and, in the case of such a breach which is capable of remedy, fail to remedy the same within [30] days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;

an encumbrancer takes possession or a receiver (or similar office holder) is appointed over any of your property or assets;

you make any voluntary (or similar) arrangement with your creditors or an administrator is appointed or you are subject to insolvency proceedings in any jurisdiction;

you go into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under these terms);

you cease, or threaten to cease, to carry on business with Refined Marketing; or

you fail to pay any amount due for our work on the Due Date.

Consequences of termination

On termination of the Contract:

you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of work carried out but for which no invoice has been submitted, we shall submit an invoice, which shall be

payable by you immediately on receipt;

you shall return all of our property. If you fail to do so, then we may enter your premises and take possession of it. Until it has been returned, you shall be solely responsible for its safe keeping and will not use it for any purpose;

the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination of the Contract shall not be affected, including the right to claim damages in respect of any breach which existed at or before the date of termination or expiry; and

clauses which expressly or by implication have effect after termination shall continue in full force and effect

Notices

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 its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next Working Day delivery service, commercial courier or fax.

A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in the point above; if sent by pre-paid first class post or other next Working Day delivery service, at 9.00 am on the second Working Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one working after transmission.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

General

If at any time one or more of the above conditions becomes in whole or in part void, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that the remainder of these terms shall remain valid and enforceable.

Refined Marketing reserves the right to change these terms and conditions from time to time and without notice.

The Contract constitutes the entire agreement between the Parties. You acknowledge that you have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of us which is not set out in the Contract.

No waiver by us of any breach of these terms by you shall be considered as a waiver of any subsequent breach of the same or any other provisions.

Thunderbolt's failure to insist upon strict performance of any provision of these Conditions shall not be deemed to be a waiver of its rights or remedies in respect of any present or future default of the Customer in performance or compliance with any of these Conditions.

The Contract between you and Refined Marketing will be on these conditions to the exclusion of all other terms and conditions. Any variations to these conditions shall have no effect unless agreed in writing and signed by both Parties.

These terms shall not be enforceable by a person who is not a party to them under the Contract (Rights of Third Parties) Act 1999 or otherwise.

These terms shall be governed by English law and the English Courts shall have exclusive jurisdiction to decide any dispute concerning these terms.

References in these terms to "writing" include facsimiles but not e-mail.