



# Business Terms & Conditions

Lumberjack Digital

We are: Lumberjack Digital

Our address is: 9 Clobhsa nan Cuaraidhean, Broadford  
Isle of Skye IV49 9DA

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Document publication date: 6<sup>th</sup> May 2019

You are: **The Client** - anyone who pays us to buy our services for branding, marketing, design, development, translation or any other fits within Lumberjack Digital's business activities.

The following Terms and Conditions of Service apply to all products and services provided by Lumberjack Digital.

Lumberjack Digital carries out all work on the understanding that the client has agreed to Lumberjack Digital's terms and conditions.

Copyright is retained by Lumberjack Digital on all design work including words, pictures, ideas, visuals and illustrations unless specifically released in writing and after all costs have been settled.

If a number of choices are presented, only one solution is deemed to be given by Lumberjack Digital as fulfilling the contract. All others remain the property of Lumberjack Digital, unless agreed in writing that this arrangement has been changed.

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## **1 Project Acceptance**

- 1.1 At the time of proposal, Lumberjack Digital will provide the customer with a written estimate or quotation. The Terms and Conditions can be downloaded from our website and will be provided when the first contract draft is provided.
- 1.2 A copy of the contract/estimate/quotation provided is to be signed and dated by the customer to indicate acceptance and should be returned to Lumberjack Digital. Alternatively, the client may send an official order or reply (email or letter) to the estimate or quotation, which binds the client to accept Lumberjack Digital's terms and conditions. No work on a project will commence until Lumberjack Digital has received either document or reply.

## **2 Plan and procedure of execution**

- 2.1 Depending on the size of the contract (normally on contracts over £4,000), we shall prepare a Plan for the Services, satisfying the requirements set out in the Briefing and Specifications.
- 2.2 Typically, the Plan shall include:
  - 2.2.1 a detailed Specifications Services;
  - 2.2.2 a listing of all items to be delivered to you under this Agreement;
  - 2.2.3 a delivery schedule containing a delivery date for each Deliverable.;
  - 2.2.4 a payment schedule setting forth the amount and time of our compensation.
- 2.3 We shall deliver the Plan to you within 10 working days from the date of the estimate/quotation approval.
- 2.4 You shall have 5 days to review the Plan.
- 2.5 Upon approval of the Plan by you, it will be marked as Schedule B and will be deemed by both parties to have become a part of this Agreement.
- 2.6 We shall then commence provision of the Services conforming to the schedule in the Plan.
- 2.7 You can submit objections within 5 days of receipt of the Plan and we shall then have 5 days to modify the Plan in response to your objections.

- 2.8 You shall review the modified Plan in 5. If in your opinion the modified Plan is unacceptable then you will have the option of terminating this Agreement upon written notice to us or permitting us to modify the Plan again under the procedure outlined in this paragraph.
- 2.9 If this Agreement is terminated, the obligations of both parties under it shall end except for your obligation to pay us all sums due for preparing the Plan and the ongoing obligations of confidentiality set forth in the provision of this Agreement entitled "Confidentiality."

### **3 Payment for Plan**

- 3.1 In the event of Plan being not accepted by you resulting in termination of the agreement, we shall be entitled to compensation on a time and materials basis at an hourly rate of £43.00 plus expenses to the date of termination.
- 3.2 We shall submit an invoice detailing the time and expenses for preparing the Plan.
- 3.3 Such Invoice shall be subject to settlement within 30 days of submission.
- 3.4 Our total compensation for preparing the Plan, however, shall not exceed 50% of the total value of the project.

### **4 Payment otherwise**

We shall be compensated at the rate of £43.00 per hour. Payment will be made within 30 days of our submission of an invoice for work completed.

OR

- 4.1 The total contract price shall be set forth in the Plan or Quotation.
- 4.2 You shall pay us the sum of 30% of the total upon approval of this Agreement.
- 4.3 The remainder of the contract price shall be payable on completion of the service provision or delivery of goods or in instalments according to the payment schedule to be included in the Plan.

- 4.4 The customer will be provided with an Approval Form and Invoice prior to final publication. At this time the remainder of the amount due will become payable and the customer will also be required to sign and return the Approval Form to Lumberjack Digital, alternately the client might provide Lumberjack Digital with a clear statement of approval electronically. Accounts that remain outstanding for 30 days after the date of invoice will incur an extra charge of 5% per month of the outstanding amount.
- 4.5 Each installment shall be payable upon completion of each project phase.
- 4.6 Charges for any additional services over and above the estimated in the Quotation, will become fully payable (100% of the quoted amount) at the time of estimate or quotation acceptance.
- 4.7 Payments may be made by cash, cheque, bank transfer, or (for overseas customers) Pound Sterling International Money Order or previously agreed electronic funds transfer.
- 4.8 Publication and/or release of work done by Lumberjack Digital on behalf of the client may not take place before cleared funds have been received.
- 4.9 Returned cheques will incur an additional fee of £50 per returned cheque. Lumberjack Digital reserves the right to consider an account to be in default in the event of a returned cheque.

## **5 Default**

- 5.1 An account shall be considered default if it remains unpaid for 30 days from the date of invoice, or following a returned cheque. Lumberjack Digital shall be considered entitled to remove Lumberjack Digital's and/or the customer's material from any and all computer systems, until the amount due has been fully paid. This includes any and all unpaid monies due for services, including, but not limited to, hosting, domain registration, search engine submission, design and maintenance, subcontractors, printers, photographers and libraries.
- 5.2 Removal of such materials does not relieve the customer of its obligation to pay the due amount. Customers whose accounts become default agree to pay Lumberjack Digital reasonable legal expenses and third party collection agency fees in the enforcement of these Terms and Conditions.

## 6 Copyrights and Trademarks

- 6.1 Any design, copywriting, drawing, idea or code created for the customer by Lumberjack Digital, or any of its contractors, is licensed for use by the client on a one-time only basis and may not be modified, re-used, or re-distributed in any way or form without the express written consent of Lumberjack Digital.
- 6.2 By supplying text, images and other data to Lumberjack Digital for inclusion in the customer's website or other medium, the customer declares that it holds the appropriate copyright and/or trademark permissions. The ownership of such materials will remain with the customer, or rightful copyright or trademark owner.
- 6.3 Any artwork, images, or text supplied and/or designed by Lumberjack Digital on behalf of the customer, will remain the property of Lumberjack Digital and/or its suppliers.
- 6.4 The customer may request in writing from Lumberjack Digital, the necessary permission to use materials (for which Lumberjack Digital holds the copyright) in forms other than for which it was originally supplied, and Lumberjack Digital may, at its discretion, grant this. Such permission must be obtained in writing before it will allow any of the aforesaid artwork, images, text, or other data to be used.
- 6.5 By supplying images, text, or any other data to Lumberjack Digital, the customer grants Lumberjack Digital permission to use this material freely in the pursuit of the design.
- 6.6 Should Lumberjack Digital or the customer supply an image, text, audio clip or any other file for use in a website, multimedia presentation, print item, exhibition, advertisement or any other medium believing it to be copyright and royalty free, which subsequently emerges to have such copyright or royalty usage limitations, the customer will agree to allow Lumberjack Digital to remove and/or replace the file on the site.
- 6.7 All design work where there is a risk that another party could make a claim should be registered by the client with the appropriate authorities prior to publishing, first use or searches and legal advice sought as to its use. Lumberjack Digital will not be held responsible for any and all damages resulting from such claims. Lumberjack Digital is not responsible for any loss,



or consequential loss, non-delivery of products or services, of whatever cause. The customer agrees not to hold Lumberjack Digital responsible for any such loss or damage.

- 6.8 The customer agrees to fully indemnify and hold Lumberjack Digital free from harm in any and all claims resulting from the customer in not having obtained all the required copyright, and/or any other necessary permission.

## **7 Variations in project scope**

- 7.1 If at any time following acceptance of the Plan you desire a change in our performance under this Arrangement that will alter or amend the Specifications or other elements of the Plan, you shall submit a written proposal specifying the desired changes.
- 7.2 We will evaluate each such proposal at its standard rates and charges.
- 7.3 We shall submit a written response to each such proposal within 5 working days.
- 7.4 Our written response shall include any impact the proposed changes will have on the price, delivery dates or warranty provisions of this Arrangement besides a statement of the availability of our personnel and resources.
- 7.5 The Plan shall be amended appropriately to incorporate the desired changes and acknowledge any effect of such changes on the provisions of this Arrangement.
- 7.6 The amended Plan shall be signed by your authorized representative and us, whereupon we shall commence performance in accordance with it.
- 7.7 If the amended Plan is not executed in line with provisions of 6.6 above, we shall not be obligated to perform any services beyond those called for in the original Plan.
- 7.8 Each Plan amended and duly authorized in writing by the parties shall be deemed incorporated into and made a part of this Arrangement.
- 7.9 The customer agrees that changes required over and above the estimated work or required to be carried out after acceptance of the draft design will be liable to a separate charge.

7.10 The customer also agrees that Lumberjack Digital holds no responsibility for any amendments made by any third party, before or after a design is published.

## **8 Time as essence**

8.1 Lumberjack Digital cannot always guarantee to start work immediately on a commission but will arrange a date with the customer as to when work can commence along with a project timeline indicating key project milestones. Any indication given by Lumberjack Digital of a design project's duration is to be considered by the customer to be an estimate.

8.2 Estimated project duration should be deemed to be from the date that cleared funds are received by Lumberjack Digital for the initial payment or by date confirmed in writing by Lumberjack Digital.

8.3 Time is the essence of this contract. We shall use all reasonable efforts to deliver the Services or Goods on schedule. However, we can extend the due date by giving written notice to you. The total of all such extensions shall not exceed 60 days.

## **9 Force Majeure**

9.1 Any delay or non-performance of any provision of this Arrangement caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of the Agreement, provided that the delayed party has taken reasonable measures to notify the other of the delay in writing. The delayed party's time for performance shall be deemed to be extended for a period equal to the duration of the conditions beyond its control.

9.2 Conditions beyond a party's reasonable control include, but are not limited to, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, labour disputes, riots, acts of war and epidemics. Failure of subcontractors and inability to obtain materials shall not be considered a condition beyond a party's reasonable control.



## **10 Testing of websites and software before acceptance**

- 10.1 We shall deliver and install the Software or Website and shall deliver all documentation and other materials required to be provided in accordance with the delivery schedule.
- 10.2 You will have 14 days from the delivery of the Software or Website to inspect, test and evaluate it to determine whether the product satisfies the acceptance criteria in accordance with the procedures set forth in the Plan.
- 10.3 If the Software or Website does not satisfy the acceptance criteria, you will give us written notice stating reasons.
- 10.4 We shall have 14 days from the receipt of such notice to correct the deficiencies.
- 10.5 You shall then have 5 days to inspect, test and re-evaluate the Software.
- 10.6 If the Software still does not satisfy the acceptance criteria, you shall have the option of:
  - 10.6.1 terminating the Arrangement pursuant to the conditions of this Agreement.
  - 10.6.2 You shall be deemed to have accepted the Software upon expiration of such period, if it does not give written notice within 5 days.

## **11 Hosting websites and email**

- 11.1 Lumberjack Digital does not always offer in-house hosting services. Lumberjack Digital can suggest possible subcontractors but does not guarantee continuous service and will accept no liability for loss of service, whatever the cause.
- 11.2 If Lumberjack Digital is not providing hosting services, fees due to the hosting organisation are the responsibility of the client and Lumberjack Digital is not liable for their payment.
- 11.3 In the event of Lumberjack Digital offering hosting services it will be on a reselling basis. Lumberjack Digital will choose an appropriate hosting service provider and will make the required purchases after agreeing them with the Client.

- 11.4 Lumberjack Digital will provide the Client access to the hosting company full Terms & Conditions prior to the final agreement.
- 11.5 Lumberjack Digital will not take responsibility or be liable for the hosting company's performance, but we will endeavour to advise and help if or when misperformances occur.
- 11.6 If Lumberjack Digital is to purchase and renew hosting services on the Client's behalf an additional administration fee, described in the quotation or agreement, will apply.
- 11.7 Lumberjack Digital might also offer support along with the hosting. This service will include regular checks and maintenance tasks. Any problem fixes will be charged separately at an hourly rate described in the quotation or agreement.
- 11.8 Lumberjack Digital may request that clients change the type of hosting account used if that account is deemed by Lumberjack Digital to be unacceptable because of poor service, lack of bandwidth or in any other way insufficient to support the website.
- 11.9 Lumberjack Digital will automatically renew any domain or hosting contract unless prior written notice is provided. A reminder will be issued to the Client 30 days prior to the renewal date.
- 11.10 To stop renewal of a domain or hosting contract with Lumberjack Digital written notice, by email or post, must be provided by the Client 25 days prior to the end of the contract's expiry date. If notice is given less than 25 in advance extra cancellation fees might apply.

## **12 Domain Registration**

- 12.1 Lumberjack Digital cannot guarantee the availability of any domain name. Where Lumberjack Digital is to register a domain name on behalf of a client it will endeavor to do so but the client should not assume a successful registration. As with hosting the purchase and renewal of domain name by Lumberjack Digital will incur an additional administration fee, described in the quotation or agreement.

### **13 Web Browsers**

13.1 Lumberjack Digital makes every reasonable effort to design and develop websites that display acceptably in the most popular web browsers. This cross-browser capability cannot be guaranteed in old browser versions of browsers released after pages have been designed and go live.

### **14 Design Credits**

14.1 The customer agrees to allow Lumberjack Digital to place a small credit on printed material, exhibition displays, advertisements and/or a link to Lumberjack Digital's own website on the customer's website. This will usually be in the form of a small logo or line of text placed towards the bottom of the page.

14.2 The customer also agrees to allow Lumberjack Digital to place websites and other designs, along with a link to the client's site on Lumberjack Digital's own website for demonstration purposes and to use any designs in its own publicity.

### **15 Rights of Refusal**

15.1 Lumberjack Digital will not include in its designs, any text, images or other data, which it deems to be immoral, offensive, obscene or illegal. All advertising material must conform to all standards laid down by all relevant advertising standards authorities. Lumberjack Digital also reserves the right to refuse to include submitted material without giving reason.

15.2 Any images and/or data that Lumberjack Digital includes are done so in all good faith. If, subsequently, they are found to contravene these Terms and Conditions, then the customer is obliged to allow Lumberjack Digital to remove the contravention without hindrance or penalty.

### **16 Disclaimer**

16.1 Lumberjack Digital makes no warranties of any kind, express or implied, for any and all products and/or services that it supplies. Lumberjack Digital will not be held responsible for any and all damages resulting from products and/or services it supplies. Lumberjack Digital is not responsible for any loss,

or consequential loss of data, or non-delivery of products or services, of whatever cause.

- 16.2 While we take reasonable steps to investigate the materials we recommend, we accept no responsibility for the performance or quality of materials or any consequential loss arising from their failure. The customer agrees not to hold Lumberjack Digital responsible for any such loss or damage. Any claim against Lumberjack Digital shall be limited to the relevant fee(s) paid by the customer.
- 16.3 Lumberjack Digital reserves the right to use the services of subcontractors, agents and suppliers and any work, content, services and usage is bound by their Terms and Conditions. Lumberjack Digital will not knowingly perform any actions to contravene these and the client also agrees to be so bound.
- 16.4 Lumberjack Digital and its clients agree to comply with suppliers Terms and Conditions which include disclaimers for non-completion on time and the flexibility to supply quantities within 10% of the total ordered. Lumberjack Digital recommends that if an exact quantity is required, then 10% extra is added to the quantity and extra time made available should the job be delayed.

## **17 General**

- 17.1 These Terms and Conditions supersede any previous Terms and Conditions distributed in any form. Lumberjack Digital reserves the right to change any rates and any of the Terms and Conditions at any time and without prior notice. However, if a contract is in place at the time of change a notice will be issued informing you of the changes.

## **18 Acceptance of Quotation and Terms and Conditions**

- 18.1 The placement of an order for design and/or any other services offered by Lumberjack Digital and validated by the customer's signature, or consenting email or letter, on the estimate or quotation form, constitutes acceptance of the estimate or quotation and agreement to comply fully with all the Terms and Conditions and forms a Contract for Business between the signatory and Lumberjack Digital.

## **19 Confidentiality**

19.1 We are aware that in the course of the performance of these terms, we will have access to and be entrusted with information in respect of your business and operation, dealings, transactions, and/or any and all other proprietary information belonging to you relating to your business or businesses and/or related affairs, all of which information (written, oral or otherwise) is or may be confidential.

19.2 Accordingly, we hereby undertake for our self and every employee or sub-contractor whose services we may use both during and after completion of the work project:

19.2.1 that we will not divulge to any person whatever or otherwise make use of (and shall use its best endeavours to prevent the publication or disclosure of) any trade secret or confidential information;

19.2.2 that we will not remove from your premises or copy or allow anyone else to copy from any document, computer disk, tape or other tangible item which contains any confidential information except as may be necessary in the course of the work for you;

19.2.3 we will make all relevant employees, agents and subcontractors aware of the confidentiality of information about the provisions of this paragraph and take all such steps as shall from time to time be necessary to ensure compliance by them with these provisions.

## **20 Duration, termination and matters after termination**

This Arrangement commences on the date it is executed and shall continue until full performance by both parties, or until earlier terminated by one party as follows:

Each party shall have the right to terminate this Arrangement by written notice to the other if a party has materially breached any obligation herein and such breach remains uncured for a period of 14 days after written notice of such breach is sent to the other party;

If we terminate this Agreement because of your default, all of the following shall apply:

- 20.1 Termination of orders may be made initially by telephone contact or e-mail, however, following this, Lumberjack Digital will need formal notification in writing to the company's postal address. The client will then be invoiced for all work completed over and above the non-refundable deposit that will have been made at the time of first ordering. The balance of monies due must be paid within 30 days.
- 20.2 You shall immediately cease use of the Services or Goods provided.
- 20.3 You shall, within 14 days of such termination, deliver to us all copies and portions of the Goods and related materials and documentation in your possession furnished by us.
- 20.4 All amounts payable or accrued to us under this Arrangement shall become immediately due and payable.
- 20.5 All rights and licenses granted to you under this Arrangement shall immediately terminate.

## **21 Relationship of parties**

Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties. In its capacity as an independent contractor, we agree and represent, and you agree, as follows:

- 21.1 We have the right to perform services for others during the term of this Arrangement subject to the condition that the same will not lead to breach of the terms of the instant arrangement.
- 21.2 We have the sole right to control and direct the means, manner and method by which the services required by this Arrangement will be performed.
- 21.3 We have the right to perform the services required by this Arrangement at any place or location and at such times as we may determine.
- 21.4 The services required by this Arrangement shall be performed by us, or our staff, and you shall not be required to hire, supervise or pay any assistants to help us.
- 21.5 We are responsible for paying all ordinary and necessary expenses of our staff.

21.6 Neither we nor our staff shall be required to devote full-time to the performance of the services required by this Arrangement.

21.7 You shall not provide insurance coverage of any kind for us or our staff.

## **22 Lumberjack Digital's employees**

You agree not to knowingly hire or solicit our employees during the performance of this Arrangement and for a period of 6 months after termination of this Arrangement without our written consent.

## **23 Dispute resolution**

In the event of a dispute arising out of or in connection with this Contract the parties undertake to attempt to settle the dispute by engaging in good faith with the other in a process of mediation before commencing arbitration or litigation.

## **24 Entire agreement**

This arrangement contains the entire agreement between the parties and supersedes all previous agreements and understandings between the parties. Each party acknowledges that, in entering into this agreement, it does not rely on any representation, warranty or other term not forming part of this agreement.

## **25 Modifications and amendments**

Modifications and amendments to this Agreement, including any Schedule or appendix hereto, shall be enforceable only if they are in writing and are signed by authorised representatives of both parties.

## **26 Governing law**

This agreement shall be interpreted according to the Laws of Scotland and the parties agree to submit to the exclusive jurisdiction of the Scottish courts.

## **27 Notices and service**

27.1 Any notice or other information required or authorised by this agreement to



be given by either party to the other may be given by hand or sent by first class prepaid post, or electronic means to the other party at the address last provided for that type of communication.

- 27.2 Any notice or other information given by post shall be deemed to have been given on the third day after it was posted; and proof that the envelope containing any such notice or information was properly addressed, pre-paid and posted, or that it has not been so returned to the sender, shall be sufficient evidence that it has been duly given.
- 27.3 Any notice or other information sent by electronic means shall be deemed to have duly sent on the date of transmission.
- 27.4 Service of any legal proceedings concerning or arising out of this agreement shall be affected by causing the same to be delivered to the party to be served at his main place of business or his registered office, or to such other address as may from time to time be notified in writing by the party concerned.