

Pepper

TERMS & CONDITIONS

2018

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Client	You.
Pepper Creative	Us, Pepper Creative Limited.
The Proposal	The document from Pepper Creative containing an estimate, a quotation or proposal and outlining the costs, deliverables, scope and timescale of a body work.
The Project	The body of work that has been agreed to be undertaken, whether or not it was preceded by a Proposal.
Timescale	A Timescale will be created by Pepper Creative at the start of each project and shared with the Client. This Timescale will specify when various aspects are to be completed by and when sign-off is required in order to progress with the Project.
Sign-off	A statement from the Client, whether written or otherwise, that confirms approval of work-to-date and agreement to proceed to any consequent stages. Each Project may have many “Sign-offs”, for example: The proposal, initial design, schematics, layout, proof and final version will all need to be “Signed Off”.
Materials	The body of work that has been produced by Pepper Creative.

<p>Delivery</p>	<p>The Delivery is when the objective of the project has been completed, and is dependant on the nature of the individual project, but should be obvious to all involved. For example:</p> <table border="1" data-bbox="810 510 1345 1086"> <tr> <td data-bbox="810 510 1078 638">Website</td> <td data-bbox="1082 510 1345 638">Date the site goes live</td> </tr> <tr> <td data-bbox="810 642 1078 862">Brochures</td> <td data-bbox="1082 642 1345 862">Date on which the printed brochures are received</td> </tr> <tr> <td data-bbox="810 866 1078 1086">Advertising</td> <td data-bbox="1082 866 1345 1086">Date on which advertising appears to public</td> </tr> </table>	Website	Date the site goes live	Brochures	Date on which the printed brochures are received	Advertising	Date on which advertising appears to public
Website	Date the site goes live						
Brochures	Date on which the printed brochures are received						
Advertising	Date on which advertising appears to public						
<p>Duration</p>	<p>The duration of these Terms & Conditions will be until the final invoice is paid. This can be after the Delivery of the project, or (for Hosting) perpetual.</p>						

PROPOSALS

COST VARIATION

01. Proposals are based on the current costs of production and are subject to increase at any time to meet any rise in such costs.

VAT

01. Pepper Creative shall be entitled to charge the amount of any VAT payable whether or not included on the estimate or invoice (if applicable).

PRELIMINARY WORK

01. Work carried out, whether research or otherwise at the Clients request will be charged (plus VAT if applicable). All preliminary design concepts and visuals, produced speculatively or commissioned, remain the copyright of Pepper Creative unless released by written confirmation.

THIRD PARTY REFERRALS

01. Pepper Creative may from time to time recommend third party ICT solution providers to Clients. Pepper Creative however cannot be held responsible or liable for damages of any kind arising from their service.

PROJECTS

WHAT DO BOTH PARTIES AGREE TO?

THE CLIENT AGREES TO...

01. Provide Pepper Creative everything that is requested from them to complete the Project, prior to the start of the Project.
02. Review Pepper Creative's work, provide feedback, and sign-off approval as per agreed Timescale.
03. Make every effort to adhere to all agreed deadlines.
04. Adhere to the payment schedule laid out in the Quotation or Proposal.
05. Provide a minimum of one months notice in writing or by email should they wish to cancel the Project.

PEPPER CREATIVE AGREES TO...

01. Carry out services in a professional and timely manner.
02. Make every effort to adhere to any deadlines agreed in the Proposal.
03. Make a maximum of 2 revisions to designs, layouts, colours etc until the Client is satisfied with the design concept or such time as both parties feel an agreement is likely to be. Additional revisions or design work outside the scope of the project will be charged separately.
04. Endeavour to respond to queries within 8 hours.
05. Maintain up to date skills and knowledge through regular training and research.

COPY & CONTENT

01. Unless otherwise stated in the Proposal or Quotation, the Client will supply all content necessary for the Project to be completed.
02. All images, photographs or text supplied by the Client should be in digital format.
03. Traditional paper photographs requiring scanning or text requiring inputting are acceptable, however additional costs will be incurred dependant on the length of time the inputting takes.
04. The Client guarantees that any elements of text, graphics, photos, designs, trademarks, or other artwork supplied to Pepper Creative for inclusion in the Project, or other design, are owned by the Client, or that the Client has permission from the rightful owner to use each of these elements, and will hold harmless, protect, indemnify and defend Pepper Creative and its subcontractors from any liability (including solicitors fees and court costs), including any claim or suit, threatened or actual, arising from the use of such elements supplied by the Client.
05. Pepper Creative may request evidence of ownership or permissions.

PROOFS

01. Proofs of all work will be submitted for the Client's approval and Pepper Creative shall not incur liability for any errors not corrected by the Client in proofs so submitted. Client's alterations and additional proofs necessitated thereby shall be charged extra. When style and type of layout is left to Pepper Creative's judgement, changes therefrom made by the Client will be charged extra.

WEBSITE DEVELOPMENT & TESTING

01. All websites are developed to work across all major browsers, platforms and devices including mobile phones and touchpads. However, Pepper Creative cannot guarantee complete and/or long term compatibility across every major browser, platform or handheld device due to updates/upgrades by their respective vendors.
02. Pepper Creative cannot guarantee compatibility in old or redundant browser software.

DISCLAIMER

01. All reasonable care is taken in the compilation of a Project but Pepper Creative accepts no liabilities for any inaccuracies or omissions. Pepper Creative also shall not be liable for damages of any kind arising out of access or inability to access the Project or the use of, or reliance upon the Project or its content, or any links or pointers to information created or maintained by others (access to which should not be considered as an endorsement of the contents thereof).

SUSPENDED WORK

01. Should work be suspended at the request of, or delayed through any default of, the Client for a period of 30 days, Pepper Creative shall then be entitled to payment for work already carried out, materials specially ordered and other additional costs including storage.

MATERIALS SUPPLIED BY THE CLIENT

01. Pepper Creative may reject any materials supplied or specified by the Client, which appear to be unsuitable. Additional costs incurred if materials are found to be unsuitable during production may be charged.
02. Where materials are so supplied or specified, responsibility for defective work will not be accepted by Pepper Creative.

PERSONNEL AND SUB-CONTRACTORS

01. Pepper Creative may in its absolute discretion sub-contract the performance of any of its obligations under these Terms.

YOUR PROPERTY

01. Client's property and all property supplied to Pepper Creative by or on behalf of the Clients will be held, worked on, and carried at the Clients sole risk.

POST PROJECT & DELIVERABLES

DELIVERY & PAYMENT

01. Payment of all outstanding sums due is at the time of delivery except where otherwise agreed in writing.
02. Unless otherwise specified the price quoted is for delivery of the work to the Clients address as set out in the estimate. A charge may be made to cover any extra costs involved for delivery to a different address or to destinations outside the UK.
03. Should expedited delivery be necessary an extra sum may be charged to cover any additional costs involved.

COPYRIGHT

01. The property in copyright of and the right to reproduce from all artwork, graphics, illustration, digital images, photographic transparencies and negatives shall remain with Pepper Creative unless some special arrangement in writing shall otherwise be made but so that:
 - a. Pepper Creative shall not reproduce or cause or suffer to be reproduced any such material as aforesaid within the same trade profession or occupation as the Client.
 - b. Pepper Creative shall be entitled to use such materials as it shall think fit at its own discretion if payment in full of all sums by the Client shall not have been made. If the Client shall require the use of such material in a field beyond that of its original requirement as specified by the Client or Pepper Creative he may only do so with the written consent and upon the terms required by Pepper Creative.
02. The parties acknowledge that these Terms do not have the effect of transferring the ownership of any Intellectual Property.
03. Any Intellectual Property owned by either party and required for the performance by the other party of its obligations under these Terms shall be licensed to that other party on a non-exclusive, royalty-free basis for the purpose of fulfilling that party's obligations under these Terms and for the period during which the

use of that Intellectual Property by that party pursuant to these Terms is required.

04. The Client acknowledges and agrees that Pepper Creative will own all Intellectual Property in connection with Pepper Creative's Materials and that all other Intellectual Property in Materials produced or created by Pepper Creative will remain permanently with Pepper Creative regardless of whether such Material is in its original form or in a form modified for your use.
05. Subject to the Client not being in breach of these Terms, Pepper Creative grants to the Client a nonexclusive royalty-free license to use the Materials for the duration of these Terms.
06. The Client may not modify Pepper Creative's Materials for any purpose without the prior written consent of Pepper Creative.
07. The Client will procure for Pepper Creative a licence on a non-exclusive, royalty-free basis, to use any existing Intellectual Property owned by a third party and required for the performance by Pepper Creative of its obligations under these Terms and for the period during which the use of those rights by Pepper Creative pursuant to these Terms is required.

MARKETING

01. The Client acknowledges and agrees that Pepper Creative may use your names, logos, domain names and trademarks set out in Item 3 of the Schedule for the following purposes:
 - a. Use on Pepper Creative's Website;
 - b. Use in Pepper Creative's written documentation.

VARIATIONS IN QUANTITY

01. Occasionally some printers have a Quantity Variation clause in their Terms, which we must pass onto the Client. Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5% for work in 1 colour and 10% for other work being allowed for in overs or shortage, the same being charged or deducted.

CLAIMS

01. Advice arising from damage, delay or loss of goods in transit must be made in writing to Pepper Creative and the carrier so as to reach them within 3 days of delivery and claims for non-delivery within 14 days of dispatch of the goods. All other claims must be made to Pepper Creative within 10 days of delivery. Pepper Creative will not be liable under any circumstances in respect of any claim which has not been made to them within the stated period.

LIABILITY

01. Pepper Creative shall not be liable for indirect loss or third party claims occasioned by delay in completing the work or for any loss to the Client arising from delays incurred by third party providers.

PAYMENTS

INTEREST ON OVERDUE FEES

01. All accounts are strictly payable 28 days from the date of the invoice.
02. A 8% monthly interest fee will be added onto any overdue accounts under the Late Payments of Commercial Debts (Interest) Act 1998 thereafter.

CHARGES AND PAYMENT

01. The parties agree that unless expressly stated in writing by Pepper Creative all fees, charges and payments set out in these Terms or any Schedule to them are exclusive of VAT.
02. The Client shall reimburse Pepper Creative for all agreed Expenses reasonably incurred by Pepper Creative in performing its obligations under these Terms.
03. The Client acknowledges that there may be additional charges or Expenses in relation to additional services required by the Client beyond those set out in these Terms. Any such additional charges or Expenses will be agreed on in writing in advance between the parties and invoiced separately.
04. The Client acknowledges that should we need to restore a website from our back-up files there will be an additional charge.
05. Without limiting any other right or remedy available to Pepper Creative, Pepper Creative may on giving seven (7) days written notice, and without having to account for or to repay any money previously paid to it pursuant to these Terms, refuse to commence, complete or deliver any work or otherwise comply with the provisions of these Terms on Pepper Creative's part to be observed or performed in the event the Client:
 - a. fails to pay any sums due to Pepper Creative under these Terms;
 - b. or otherwise defaults in the due observance and performance of these Terms.

DOMAIN NAMES

01. The Client will legally own any domain name associated with the Project.
02. If Pepper Creative manages a domain name of behalf of the Client it will be automatically renewed unless one months notice is supplied in writing.
03. Pepper Creative reserves the right not to fulfill any domain requests on behalf of the domain owner if there is any money owing from this or any other Project.

HOSTING

EQUIPMENT & ACCESS

01. The Client must provide, at their own cost, all telecommunications services, computers and other equipment or services necessary to enable them to have access to the Hosting Services. The Client must comply with all the rules and regulations that apply to the communications means by which the Client obtains access to the Hosting Services.

AVAILABILITY

01. The Client acknowledges that Pepper Creative's systems, servers, and equipment may from time to time be inoperative or only partly operational as a consequence of mechanical breakdown, maintenance, hardware or software upgrades, telecommunications connectivity problems or other causes outside its control.
02. In the event of any such interruptions Pepper Creative will notify the Client by email or telephone as soon as reasonably practicable of any such interruptions to its ability to provide the Hosting Services.
03. Pepper Creative agrees to rectify faults or problems and to restore the system to full operational capacity as reasonably practicable.

LIMITATION OF LIABILITY

01. Hosting contracts are normally 12 months and payable per year in advance. Pepper Creative requires a minimum 30 days notice to cancel a hosting contract.
02. A small admin fee is payable for switching to another hosting provider.
03. If a website is to be hosted elsewhere, Pepper Creative cannot guarantee that the website will be fully compatible with all the hosting provider's server operating systems.
04. Pepper Creative does not offer any technical support for any other web site hosting company that the Client may choose.

05. Pepper Creative cannot guarantee that the functions contained within any web page will always be error free, and therefore Pepper Creative will not be liable in any way whatsoever to the Client for any third party damages, including lost profits, lost savings or other incidental, consequential or special damages arising out of the operation of or inability to operate the web site and any web pages, even if the Client has advised Pepper Creative of the possibilities of such damages.
06. Pepper Creative gives no condition, warranty, or undertaking, and makes no representation to the Client about the suitability of, or fitness of the Hosting Services for your purposes other than those conditions, warranties, undertakings or representations expressly set out in these Terms.
07. With the exception of any rights which you may have under applicable law in all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by Section 12 of the Sale of Goods Act 1979) are excluded from these Terms to the fullest extent permitted by law.
08. Nothing in these Terms excludes or limits the liability of Pepper Creative for:
 - a. death or personal injury caused by Pepper Creative's negligence; or
 - b. from fraudulent misrepresentation or fraud.
09. Pepper Creative's total liability in contract, tort, (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of these Terms shall be limited to the Service Fees received in relation to the Hosting Services; and
10. In no event shall Pepper Creative be liable to the Client whether arising under these Terms or in tort (including negligence or breach of statutory duty), misrepresentation or however arising, for any Consequential Loss. 'Consequential Loss' shall for these purposes mean:
 - a. pure economic loss
 - b. losses incurred by any Client of yours or other third party
 - c. loss of profits (whether categorised as direct or indirect)

- d. losses arising from business interruption
 - e. loss of business revenue, goodwill, anticipated savings
 - f. losses whether or not occurring in the normal course of business, wasted management or staff time
 - g. loss or corruption of data.
11. Pepper Creative accepts no liability however caused (to the maximum extent permitted by applicable law) arising out of the use of or access to our services (which includes without limitation) any errors or omissions contained in your website or if your website is unavailable and we shall not be liable for any direct or indirect:
- a. economic losses (including without limitation loss of revenues, data, profits, contracts, use, opportunity, business or anticipated savings);
 - b. loss of goodwill or reputation; or
 - c. loss or damage which was not reasonably foreseeable, suffered or incurred arising out of or in connection with your use of our services and/or these terms and conditions.

CLIENT CONTENT

01. Pepper Creative will not be responsible for the accuracy and/or functionality of the Client Content in the form in which it is provided by the Client or as modified upon and in accordance with your instructions for inclusion on the Website.
02. If Pepper Creative reasonably forms the view that the Client Content of any Website may be pornographic, defamatory, misleading or deceptive or otherwise in breach of any third party's rights or in contravention of applicable law, Pepper Creative may without prior notice or any liability remove that Client Content from the Website and shall within twenty four (24) hours thereafter notify the Client of its removal.
03. The Client shall indemnify and hold harmless Pepper Creative and its affiliates, employees, agents, contractors, directors, officers and third party providers from all liabilities, demands, costs and expenses (including legal expenses) arising in connection with any Client Content including but not limited to the posting and/or transmission of Client Content on the Website.

ENDING OUR AGREEMENT

TERMINATION

01. Pepper Creative may terminate these Terms by notice in writing to the Client in the event that:
 - a. the Client fails to pay any amount to Pepper Creative due under these Terms and do not make that payment within seven (7) days after receiving notice requiring the Client to do so;
 - b. the Client fails to perform any of the obligations on its part to be observed or performed pursuant to these Terms and such failure is not remedied by the Client within fourteen (14) days after receipt by it of a notice in writing requiring the default to be remedied;
 - c. The client fails to perform any of the obligations on your part to be observed or performed pursuant to the Online Conduct Policy and such failure is not remedied by the Client within seven (7) days after receipt by the Client of a notice in writing requiring the default to be remedied; or
 - d. any of the warranties or representations made by the Client contained in these Terms are false or inaccurate in any material way.

02. Either party shall be entitled to terminate these Terms immediately by notice in writing to the other if the other party shall:
 - a. Commit any material breach of any of its obligations under these Terms which (in the case of a breach capable of being remedied) shall not have been remedied within fourteen (14) days after receipt of a written request so to do;
 - b. Pass a resolution for winding-up otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect;
 - c. Have an administrator appointed or documents are filed with the court in respect of such appointment or notice is

served of an intention to appoint an administrator by that party or its directors or by a qualifying floating charge holder as provided in the Insolvency Act 1986, paragraph 14 Schedule B1.

- d. Make any voluntary arrangement with its creditors or become subject to an administration order;
 - e. Have a receiver or manager or similar official appointed over the whole or substantial part of its undertaking or assets of such party;
 - f. Cease or threaten to cease to carry on business; and
 - g. Have any similar event occur under the law of any other jurisdiction in respect of it.
03. Pepper Creative reserve the right to withhold/suspend hosting/email services if accounts are not settled within the agreed payment dates.
04. Pepper Creative reserve the right to withhold/suspend hosting/email services immediately if they consider hosted content or code or emails a threat to the security or integrity of the Pepper Creative hosting server without definitions.

CONFLICT

01. In the event of ambiguity or conflict between the provisions of these Terms, the Outline Conduct Policy and the Schedules the provisions of these Terms shall prevail.

ALTERNATIVE DISPUTE RESOLUTION PROCEDURE

01. If any dispute or difference arises out of or in connection with these Terms which the Parties are unable to resolve by negotiation (the 'Dispute'), the Parties shall seek to resolve the Dispute amicably by using the following procedure.
02. The Parties shall submit the Dispute to an independent mediator ('Mediator') appointed by agreement between the Parties to assist them in resolving the Dispute. Any Party may give written notice to the other describing the nature of the Dispute, requiring the Dispute to be submitted to a Mediator and proposing the names of up to three (3) suitable persons to be appointed. If no such Person is appointed by agreement between the Parties

within fifteen (15) days after such notice is given (or, if no such notice is given, within thirty (30) days after the Dispute has arisen), any party may request the British Chambers of Commerce to appoint the Mediator.

03. The Parties shall, with the assistance of the Mediator, seek to resolve the Dispute by using an alternative dispute resolution (ADR) procedure agreed between the Parties or, in default of such agreement, established by the Mediator.
04. If the Parties reach agreement as to the resolution of the Dispute, such agreement shall be recorded in writing and signed by the Parties (and, if applicable, the Mediator), whereupon it shall become binding upon the Parties.
05. The Parties shall be free to litigate in accordance with governing law and jurisdiction clause if:
 - a. the Dispute has not been resolved to the satisfaction of all parties within sixty (60) days after the appointment of the Mediator; or
 - b. any Party fails or refuses to agree to or participate in the ADR procedure; or
 - c. the Dispute is not resolved within ninety (90) days after it has arisen,
06. In the event that the Dispute is litigated the Mediator shall not, unless the Parties all agree otherwise, take any part in the proceedings, whether as witness or otherwise, and no aspect of the ADR procedure, including any recommendations made by the Mediator in connection with the ADR procedure, shall be relied upon by any Party without the consent of the other Parties and the Mediator;
07. No party shall make use of nor rely upon information supplied, or arguments raised, by the other Party in the ADR procedure, and all information discussed will be without prejudice.
08. The cost and fees of the Mediator, the ADR service provider and any neutral venue shall be borne equally by the Parties. The Parties shall bear their own costs of all other aspects of the ADR procedure.

GENERAL

GENERAL LIEN

01. Without prejudice to other remedies, Pepper Creative shall in respect of all unpaid debts due from the Client have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days notice to dispose of such goods or property as Pepper Creative thinks fit and to apply any proceeds towards any such debts.

FORCE MAJEURE

01. If Pepper Creative shall become unable to make delivery of any goods or perform any services the subject matter of the order through an act of God, outbreak of war, accident, inability to obtain raw materials, telecommunications network or third party host server breakdown, labour dispute of an official or unofficial nature or any other cause whether or not of a like nature to the above but being a cause reasonably beyond Pepper Creative's control, Pepper Creative shall be entitled to cancel its obligation to the Client by notice in writing but shall be entitled to payment for any service rendered or goods supplied up to the date of such notice.

LAW

01. These conditions and all other express terms of contract shall be governed and construed in accordance with the Laws of England

COMPLIANCE

01. Pepper Creative and its Clients are required to comply with UK legislation relating to websites and ecommerce.

WARRANTIES

01. Each party warrants to the other that:
 - a. It has authority to enter and to perform its obligations under these Terms; and
 - b. It has the ability to perform its obligations under these Terms.

- c. Pepper Creative warrants to you that the Hosting Services: will be provided by the appropriately qualified and experienced Personnel using all reasonable care and skill
 - d. Will in all material respects substantially comply with the Schedule; and
 - e. Will not knowingly infringe the Intellectual Property rights of any third party.
02. The Client warrants to Pepper Creative that:
- a. The use by Pepper Creative of any works or Materials submitted by the Client to Pepper Creative under these Terms will not infringe the rights of any person or contravene any law;
 - b. At the time of entering into these Terms you are not relying on any representation made by Pepper Creative which has not been expressly set out in these Terms;
 - c. you shall install and maintain Computer Virus protection software of not less than industry standard, and take all other reasonable steps to ensure that any software used in connection with the Hosting Services, and any material or data provided to Pepper Creative will be free from any Computer Virus and will not damage or corrupt any other data or system; and
 - d. that you are solely responsible for communicating with persons who access your websites or other sites and that the Client will not divert any of your own client complaints or concerns to Pepper Creative.
 - e. that the Client will notify Pepper Creative should the Client be expecting a high amount of traffic on your website at any time. This may result in an upgrade to our premium rate hosting package to avoid extra costs for high bandwidth usage in the future.
03. Pepper Creative shall not be liable for defects resulting from improper use of Hosting Services by the Client or by another third party.