



## TERMS AND CONDITIONS

*To be read in conjunction with our letter of agreement for each new project.*

### 1. General

The Terms set out below (“these terms”) should be read in conjunction with EarthMonkey Media’s Letter of Agreement, and shall be deemed to be part thereof. These terms supersede all previous terms.

- (a) “EarthMonkey” and “EarthMonkey Creative Media” are trading names of EarthMonkey Media Ltd. Trading address: Indycube, The Media Centre, Culverhouse Cross, Cardiff CF5 6XJ. Telephone 0845 643 6261. E-mail: [info@earthmonkey.co.uk](mailto:info@earthmonkey.co.uk). Registered in England and Wales 6183868.
- (b) “The customer” means any person or company with whom EarthMonkey contracts, either verbally or in writing. Where the Customer comprises more than one person, their liability under these terms and conditions shall be joint and several.
- (c) “Contract” means any contract for copywriting, design, marketing, training or consultancy services made between EarthMonkey and the Customer. This includes any Letter of Agreement which is signed by both parties; any written quotation from EarthMonkey which is accepted by the customer; or any written order or booking of the Customer which is accepted by EarthMonkey.
- (d) “Services” shall mean any of the copywriting, design, marketing, training or consultancy services offered by EarthMonkey.
- (e) Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

## **2. Basis of Contract**

- (a) The Contract shall incorporate and be subject to these Terms to the exclusion of any terms, which the Customer may purport to impose, and to the exclusion of any course of dealing established between EarthMonkey and the Customer.
  
- (b) No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of EarthMonkey and the Customer.
  
- (c) Any quotation given by EarthMonkey is an invitation to the Customer to make an order only within 30 days of the quotation date and no order of the Customer placed with EarthMonkey in pursuance of a quotation or otherwise shall be binding on EarthMonkey unless and until it is accepted and confirmed in writing by EarthMonkey.
  
- (d) The Customer or its employees or agents are not authorised to make any representations concerning the products or services of EarthMonkey or concerning the Contract unless confirmed by EarthMonkey in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed.
  
- (e) Any advice or recommendation given by EarthMonkey or its employees or agents to the Customer or its employees or agents is acted upon entirely at the risk of the Customer, its employees or agents and accordingly EarthMonkey shall not be liable for any such advice or recommendation.
  
- (f) Any typographical, clerical or other error or omission in any promotional literature, quotation, price list, invoice or other document or information issued by EarthMonkey shall be subject to correction without any liability on the part of EarthMonkey.

### **3. Orders**

- (a) All orders for Services shall be accepted by EarthMonkey subject to the availability of EarthMonkey or its personnel and EarthMonkey shall have no commitment to commence work on any such order until the order details have been confirmed in writing by them.
- (b) All orders for Services shall be subject to Government and other local regulations, which may be introduced from time to time.
- (c) EarthMonkey will use its best endeavours to comply with all directions and requests for information to be included in any design or copywriting project, but responsibility for the accuracy of all information supplied by the Customer shall rest with the Customer and no liability will be accepted.
- (d) Errors where copy or design is in accordance with a final proof approved by the Customer in accordance with EarthMonkey's standard procedures will not be corrected by EarthMonkey until additional billing is documented.
- (e) The Customer warrants that where it has provided promotional materials such as advertising slogans and company or product logos, the same are not subject to any copyright or other intellectual property rights; and that reproduction of the same by EarthMonkey will not cause any breach of any copyright or other intellectual property rights; and that the Customer will where appropriate secure all necessary licences and authorisations for publication of any such restricted material. The Customer hereby indemnifies EarthMonkey against any and all actions, claims losses, damages and liabilities arising from any breach of copyright or other intellectual property rights caused by the provision of material for publication by the Customer.
- (f) In the event of cancellation the Customer shall be liable to pay 100% of the total contract price specified unless otherwise negotiated.

- (g) For copywriting or design services, EarthMonkey shall produce the finished works according to the agreed creative brief either on or before the completion date agreed by both parties. The customer must submit any requests for amendments or revisions within 5 working days of receipt of the finished works. Failure to do so will constitute the customer's approval of the finished works, and EarthMonkey will invoice for the full contract fee. Any revisions or amendments requested after the date of invoice will incur an additional charge.

#### **4. Contract Prices and Fees**

- (a) The prices or fees payable by the Customer shall be in accordance with EarthMonkey's rates of payment, as specified in the Contract of which these terms form part.
- (b) All prices and fees quoted are exclusive of United Kingdom Value Added Tax, or any other local tax payable by EarthMonkey in any other jurisdiction unless otherwise stated.
- (c) Where applicable, United Kingdom Value Added Tax or any local taxes will be charged at the rate ruling at the date of order.

#### **5. Payment**

- (a) The prices or fees payable by the Customer shall be in accordance with EarthMonkey's rates of payment, as specified in the Contract of which these terms form part.
- (b) Failure to pay by the due date will entitle EarthMonkey to cancel any service being provided by giving written notice to the Customer and any part payment shall be retained by EarthMonkey. The time of payment and the price of the goods shall be the essence of the Contract.
- (c) If payment shall not be made in accordance with Condition 5 (a) above, EarthMonkey shall pass the matter onto a collections agency and reserve the right to charge interest on overdue balances for the period from such

date until the date of payment. This shall include any period after the date of any court judgement against the Customer. Interest shall be charged at the rate of 12.5% under the Late Payments of Commercial Debts Act 1998, plus a penalty charge of £40.00 on invoices not exceeding £150.00 and £70.00 on all other invoices.

- (d) Where cheque payments are accepted, cheques should be made payable as indicated on invoices and statements.
- (e) In the event of any cheques passed by the Customer to EarthMonkey being dishonoured, a charge of £30 (or such other sum as EarthMonkey may from time to time advise the Customer) will be made to the Customer to cover bank and administrative costs.

## **6. EarthMonkey Copyright**

- (a) All creative, strategic and training materials provided by EarthMonkey in respect of the Contract shall be the absolute property of EarthMonkey and shall remain so until such date as full payment is made by the Customer. On such date, all rights to the same shall pass to the Customer, for use as detailed in the Contract, noting that further reproduction, imitation or creation of derivative works of the same is prohibited.
- (b) All EarthMonkey's rights are reserved in respect of the Services provided for this or any other Contract.
- (c) In the event of a cancellation of the Contract for whatever reason the Customer shall forthwith return to EarthMonkey all documentation and information provided by EarthMonkey in electronic or any other form. All copyright, patent, trade secret and intellectual property and performance rights in the Services which EarthMonkey may provide in relation to the Contract shall remain vested in EarthMonkey (or the owner thereof for the time being). The Customer shall not acquire any intellectual property

rights or licence relating to the Services, and may not copy or reproduce, the same.

(d) Unless otherwise agreed in writing between EarthMonkey and the client, EarthMonkey shall be entitled to include all works in a portfolio, to be viewed either on EarthMonkey's website or in hard or e-copy for distribution to prospective clients. This includes EarthMonkey's right to add the client's name to a client list for similar distribution.

(e) The client undertakes to supply a hard copy of any printed materials for EarthMonkey's own promotional purposes.

## **7. Liability**

(a) Except in respect of death or personal injury caused by the Company's negligence EarthMonkey shall not be liable to the Customer by reason of any representation, or any implied warranty condition or other term or any duty at common law or under express terms of the Contract, for any consequential loss or damage (whether loss of profits or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the Contract except as expressly provided in these terms.

(b) EarthMonkey shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing its obligations under the Contract or any failure so to perform, if the delay or failure was due to any cause beyond EarthMonkey's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

- (i) Act of God, explosion, flood, tempest, fire or accident.
- (ii) War or threat of war, sabotage, insurrection, civil disturbances or requisition;
- (iii) Acts, restrictions, byelaws, prohibitions or measures of any kind on the part of any government, parliamentary or local authority;

- (iv) Import or export regulations or embargoes;
  - (v) Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of EarthMonkey or of a third party)
  - (vi) Difficulties in obtaining raw materials, labour, fuel, parts or machinery;
  - (vii) Power failure or breakdown in machinery
- (c) Without prejudice to the foregoing EarthMonkey shall in no circumstances be liable for any loss, damage, costs or expenses, which exceed in the aggregate the fees payable by the Customer.

## **8. Insolvency of the Customer**

- (a) This clause applies if:
- (i) the Customer proposes any voluntary arrangement or enters into any compromise or other arrangement with its creditors; or
  - (ii) an encumbrance takes possession, or a receiver or manager is appointed of any of the property or assets of the customer, or
  - (iii) being an individual or firm the customer becomes subject to a bankruptcy petition or becomes bankrupt, or
  - (iv) being a Company the Customer becomes subject to a winding-up petition or goes into liquidation or becomes subject to a petition or an administration order or upon the making of an administration order, or
  - (v) the Customer ceases, or threatens to cease, or carry on business; or
  - (vi) EarthMonkey reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly
- (b) If this clause applies then without prejudice to any other right or remedy available to the Company, EarthMonkey shall be entitled to cancel the Contract or suspend the performance of the Contract without liability to the Customer.

## **9. Notices**

Any notice required or permitted to be given by either party to the other under these terms shall be in writing addressed to the other party at its

registered office or principal place of business or such other address as may be at the relevant time have been notified pursuant to this provision to the party giving the notice. No waiver by EarthMonkey of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**10. Severability**

If any provision of these terms is held by any competent authority to be invalid the remainder of the provisions in question shall not be affected thereby.

**11. Proper Law**

The Contract shall be governed by and construed in accordance with the laws of England and Wales.

**12. General**

(a) The Customer shall not be entitled to assign its rights or transfer any of its rights or obligations under the Contract, in whole or in part, without prior written consent of EarthMonkey.

(b) The expiration or termination of the Contract, however arising, shall be without prejudice to any provisions of the Contract (including these Conditions), which are to have effect after the date of such expiration or termination.