

# CHOPSTIX TERMS AND CONDITIONS

## 1. TERMS AND CONDITIONS

1.1 These terms and conditions together with any Proposal will form a binding contract between the Client named on the request form accompanying these terms 'Request' ("Client") and *Chopstix Media Ltd* ("Chopstix") which shall constitute the entire agreement between Client and Chopstix and apply to any trading agreement or other contract or arrangement between Client and Chopstix;

1.2 These terms apply to the exclusion of all other terms, conditions or contract Client may propose and shall not be varied unless agreed in writing and signed by Chopstix.

## 2. CHOPSTIX' OBLIGATION

2.1 In consideration of the payment by Client to Chopstix of the Fees as set out in the Request, Chopstix agrees during the Term, to provide to Client the goods and services described in the Request ("Works") in accordance with the Proposal (where such exist), with reasonable and due care in accordance with and subject to these terms.

2.2 Chopstix undertakes that the Works shall be faithful to the basic conceptualisation of the Proposal and reflect the same standards of quality and integrity.

## 3. CLIENT

3.1 Client will co-operate with and act in good faith towards Chopstix and provide on request such source materials including those listed in the Proposal ("Client Content") as Chopstix is to incorporate into the Works or Chopstix require to carry out its obligations hereunder.

## 4. PAYMENT

4.1 Client shall pay Chopstix the Fees without deduction or set-off (with VAT thereon) within 30 days of receipt of a valid invoice.

4.2 Chopstix shall be entitled to charge interest on any overdue payment at the rate of 4% over base rate of Barclays Bank at the time.

4.3 Chopstix may charge additional fees in accordance with its then prevailing rates in the event of:

4.3.1 delays or additional works caused or required by Client including its failure to properly and / or timeously provide Chopstix with such information, Client Content, instructions, media or approvals as are reasonably required for the supply of the Works;

4.3.2 changes to the cost of labour, materials, services and other circumstances outside of Chopstix' s reasonable control.

4.3.3 Client requiring the supply of Works, goods and services in addition to those described in the Request or any variations to the Works;

4.3.4 agreed third party expenses.

4.4 In the event that Client requires any change or alteration to the Works ("Change"), Chopstix and Client shall, prior to such change being effective or implemented, agree:

4.4.1 the nature of the Change;

4.4.2 the procedures for implementation of such Change; and

4.4.3 the variation to the Fees.

4.5 Until any Change is formally agreed between Client and Chopstix, Chopstix will continue to perform and be paid for the Works as if the Change had not been proposed, unless otherwise requested by Client.

4.6 All and any Changes to the Works shall be reflected and accompanied by appropriate amendments to the Proposal and Fees.

## 5. INTELLECTUAL PROPERTY RIGHTS / CONFIDENTIALITY

5.1 All copyright, design right, registered designs, trade marks, patents, database rights and confidential information and ideas and all other rights whatsoever of a like nature, world wide, whether registered or not, of whatever nature in material devised, created or commissioned by Chopstix, in supplying the Works and under this Agreement will vest in and belong to Chopstix unless otherwise agreed in writing on the Request and signed by both Parties. Chopstix may include within the Works reasonable copyright notice and credit.

5.2 Client shall have the Rights of Use set out in the Request which rights shall take effect and be conditional upon receipt by Chopstix of the Fees. Where no such Rights of Use are specified Client is granted a non-exclusive licence to use the Works for the purpose specifically described in the Request, Proposal or other Works documentation. Such Rights of Use shall apply only to those ideas, concepts, proposals and elements of the Works which Chopstix is specifically requested to proceed with and not to any original ideas, concepts or proposals of Chopstix, pitched or suggested to Client but not further explored by Chopstix for Client hereunder, all of which shall be retained by Chopstix. The use of all such retained elements and the extension of the Rights of Use shall be subject to the payment of additional Fees to be agreed in writing.

5.3 Client grants Chopstix a non-exclusive royalty free licence to use the Client Content for all purposes relating to this Agreement and warrants that it is fully entitled to grant Chopstix these rights and that the Client Content is free of racist, defamatory, obscene and other legally restricted material.

5.4 Client undertakes to Chopstix to indemnify and hold harmless Chopstix in full and defend at its own expense Chopstix against all costs, damages and losses incurred by it arising out of its use of the Client Content, breach of clause 6 of this Agreement or breach of this clause 5.

5.5 Each Party undertakes that it will keep secret and confidential the terms of this Agreement and any information supplied by either party in connection with this Agreement or in connection with the business of the other and in connection with the Works and shall only disclose such information or part thereof (except to its own employees and advisers and then only on a need to know basis) with the other party's prior written consent PROVIDED THAT this clause shall not extend to information which was and can be shown to be rightfully in the possession of Client prior to the commencement of the negotiations leading

to this Agreement or which is in the public domain (other than as a result of a breach of this clause).

5.6 Client shall not modify, adapt or translate the Works without the prior written consent of Chopstix or as otherwise permitted by law where all modifications, adaptations, translations shall belong to and vest in Chopstix.

5.7 Chopstix warrants that it will use reasonable efforts to ensure that the Works do not infringe the copyright of any third party.

5.8 Chopstix shall be entitled to discuss this project and its construction further to the launch/publication, for the purpose of marketing and promotion.

## 6. DATA PROTECTION

6.1 Client undertakes to comply with any data protection, privacy or similar laws anywhere in the world, including without limitation, the Data Protection Act 1998, ("Data Protection Laws") and will use its best endeavours to ensure that the all and any personnel data included in the Client Materials or otherwise provided by Client to Chopstix complies with and has been collected in accordance with such laws.

6.2 Client undertakes to do such things as are within its power and are reasonably necessary to enable Chopstix to comply with its own obligations under Data Protection Laws and, without prejudice to the foregoing, Client will use all reasonable efforts not to do anything that would result in Chopstix breaching its obligations under Data Protection Laws.

6.3 Client shall ensure that it only processes personal data obtained under or further to this Agreement in accordance with Data Protection Laws and for purposes notified to it by Chopstix and/or the relevant data subjects.

## 7. INSPECTION AND ACCEPTANCE

7.1 Client shall inspect the Works regularly and shall notify Chopstix immediately if it wishes to reject any part of the Works because such do not comply with the Proposal or are defective in material and workmanship whereupon Chopstix shall, if such defect is proved, be given 5 days within which to remedy the same;

7.2 If the Works are not rejected within 48 hours of delivery then Client shall be deemed to accept the Works.

## 8. LIABILITY AND WARRANTY

8.1 Subject to Clause 8.2 below, Chopstix' liability for any loss or damage direct, consequential or otherwise whether such loss or damage is caused in tort, by breach of contract or otherwise shall not exceed the Fees invoiced by Chopstix to Client for the Works.

8.2 Nothing in clause 8.1 above shall exclude or restrict any liability of Chopstix to Client for loss or damage resulting from death or personal injury.

8.3 When instructions or advice are given or received orally by Chopstix, it shall have no liability to Client for any misunderstanding or misrepresentation which may arise in relation thereto except in relation to fraudulent misrepresentations.

8.4 Chopstix shall have no liability to Client in respect of the Client Content. On completion of the Works Client agrees to collect the Client Content within 2 months of completion of the works, failing which, Chopstix may dispose of them on giving Client 14 days notice.

## 9. LEGISLATION AND THIRD PARTY MATERIALS

9.1 Client shall be responsible for and notify Chopstix of all and any applicable rules, regulations, codes of practice and laws relating to its use and operation of the Works including without limitation any obligations under the Data Protection Laws; Regulation of Investigatory Powers Act 2000; Competition Act 1998; Disability Discrimination Act 1995 and equivalent legislation. Chopstix shall not be liable to Client in relation to such legislation and gives no warranty, representation or undertaking in relation thereto, unless agreed in writing otherwise.

9.2 Chopstix gives no warranty, representation or undertaking in relation to any third party materials or works.

9.3 Prior to any selection, use or reproduction by Client of Works, Chopstix shall use reasonable efforts to, on reasonable request, provide Client with copies and evidence of such rights, clearances, permissions and licences as shall be necessary for the use of the Works by Client.

9.4 Subject to and provided that Chopstix acts in accordance with clause 9.3 above, Client agrees that it is responsible for its selection and use of all Works and contracting with any third parties in relation thereto and that it shall be responsible for making reasonable enquiries into the copyright and like rights in any Works.

9.5 Subject to the foregoing, Chopstix shall have no liability to Client whatsoever in relation to the Works and gives no warranty and makes no representation as to whether Works contain or are free from racist, defamatory, sexually explicit, inflammatory, obscene or other legally restricted material and explicitly excludes all and any liability in relation thereto.

## 10. TERMINATION

10.1 Chopstix shall be entitled to terminate this Agreement upon Client's material breach (including without limitation non-payment of any sum due) unless Client remedies such breach within 7 days of its occurrence.

10.2 Chopstix will not be liable in any amount for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen contingency beyond the reasonable control of

**Chopstix** including without limitation Internet outages, communications outages, fire, flood, war or act of God.

10.3 **Client** may not unilaterally cancel its order of the Works or otherwise terminate this Agreement (save in the event of a material breach by **Chopstix** of a fundamental term of this Agreement) at any time without payment of the Fees in full.

10.4 During the course of this Agreement and for a period of 12 months afterwards, **Client** shall not solicit the staff of **Chopstix** or any person employed or engaged by **Chopstix** in relation to its provision of the Services in the 6 months prior to expiry or termination of this Agreement, or entice them to transfer their employment or services.

## 11 GENERAL

11.1 Nothing in this Agreement shall be deemed to constitute a partnership or agency relationship between the Parties and neither of the Parties shall do or suffer to be done anything whereby it may be represented as a partner or agent of the other party.

11.2 If at any time any part of this Agreement is or becomes unenforceable, such part will at **Chopstix** option be construed as far as possible to reflect the parties' intentions and the remainder of the provisions will remain in full force and effect.

11.3 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of rights operate as a waiver of any subsequent breach of this Agreement.

11.4 **Client** shall not assign the benefit or burden of this Agreement without the prior written consent of **Chopstix**.

11.5 No person who is not a party to this Agreement shall be entitled to enforce any of the terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

11.6 In the event of any inconsistency between these Terms and the Request (including the Proposal document where such exists) the terms of the Request shall take precedence.

11.7 These Terms are made and shall be construed in accordance with the laws of England and the Parties submit to the exclusive jurisdiction of the English courts.