

# General Terms of Sale

(06/07/2023)

These terms apply to all services provided by Etch (UK) Limited (“Etch”) to you (the “Client”) (each a “Party”). They will automatically form the basis of a binding contract between us when you instruct us to proceed with a proposed project or when we provide a service to you.

## Overview

Etch provides services in relation to the internet and world-wide web, including but not limited to, designing and developing websites, software applications, website hosting, online marketing and consultancy (the “Services”).

The Client wishes to obtain these Services from Etch on a project-by-project basis from time to time.

These Services are provided by Etch on the terms below.

## Definitions

“Affiliates”	Any ultimate holding company of a party or a subsidiary of a party or a subsidiary (whether direct or indirect) of a party’s ultimate holding company. The terms ‘subsidiary’ and ‘holding company’ shall have the meanings defined under s1159 of the Companies Act 2006.
“Deliverable”	A Website, software application, document, report, or other tangible work or asset that forms part of the Services as described in a Statement of Work.
“Intellectual Property Rights”	All copyrights, patents, registered and unregistered design rights, trademarks and service marks and applications for any of the foregoing, together with all trade secrets, know-how, rights to confidence, title, interest and other intellectual and industrial property rights in all parts of the world.
“Project”	A specific set of Services for a Client as described in a Statement of Work.
“Price”	The cost of a Project as stated in a Proposal or Statement of Work.
“Proposal”	An offer by Etch to provide Services to the Client.
“Retained Copyright”	Intellectual Property Rights owned by Etch before the start date of a Project, or Intellectual Property Rights which are of a general or non-Project specific nature.
“Purchase Order”	A request by the Client for Etch to perform a Project.
“Statement of Work”	A confirmation by Etch to provide a Project to the Client.
“Specification”	The technical, functional and other specifications of the Services as described in the respective Proposal or Statement of Work.
“Third Party Copyright”	Intellectual Property Rights owned by third parties.
“Website”	A compilation of one or more webpages including a combination of text, images, data or other material accessible through the internet and owned or operated by the Client.
“Working Hours”	8.30am to 5.30pm Monday to Thursday and 8:30am to 3pm Friday (London time, excluding United Kingdom bank and public holidays).

## **1. SERVICES**

- 1.1 Etch will provide a Statement of Work to the Client which will detail the scope of the Project and the services to be provided. This will include commencement date, price and duration. The Statement of Work will form part of the 'General Terms of Sale'.
- 1.2 Etch will ensure that the Services are carried out by appropriately experienced, qualified and trained personnel with due care and diligence.
- 1.3 Etch will perform the Services in line with best industry practice and in a way most suited to the reasonable requirements of the Client and where appropriate in line with the reasonable instructions of the Client.

## **2. PRICE AND PAYMENT**

- 2.1 All Prices are exclusive of Value Added Tax ('VAT'), where applicable.
- 2.2 Unless agreed otherwise in the Statement or Work, the Client agrees to pay invoices within 21 days of issue.
- 2.3 All Prices are bona-fide estimates and Etch may reasonably change these if a change in the amount or complexity of the Project happens because;
  - 2.3.1 any information provided by the Client to Etch proves inaccurate; or
  - 2.3.2 the extent of the Services required or requested by the Client increases.
- 2.4 Unless stated, Prices do not include;
  - 2.4.1 costs of licensing Third Party Copyright included in a Deliverable (including stock photography and software components); and
  - 2.4.2 third-party advertising costs (including pay-per-click and social network campaigns); and
  - 2.4.2 travel, accommodation and out-of-pocket expenses reasonably incurred in providing the Services. Such costs will be mutually agreed with the Client before they are incurred and invoiced under these terms.
- 2.5 The Client will not delay any payment to Etch or make any claim against Etch for any non-performance of any third party other than Etch's agents in relation to the Services.
- 2.6 The Client acknowledges costs may be affected by project delays or project dormancy resulting from the Client. Penalty charges may be invoiced as detailed in the Statement of Work.

## **3. TERM AND TERMINATION**

- 3.1 These terms will start to apply when the Client requests Etch to start a Project, the Client issues a Purchase Order to Etch, Etch issues a Statement of Work to the Client, or when Etch starts providing a Service to the Client, whichever occurs first.
- 3.2 These terms will end 90 days after the last Acceptance of any Deliverable under these terms.
- 3.3 Either Party may end these terms with immediate effect by notice to the other in the event that;
  - 3.3.1 the other Party breaches any part of these terms and such breach is incapable of remedy or if the breach is remediable, it continues for a period of 30 days after written notice requiring the same to be remedied has been given to the Party in breach; or
  - 3.3.2 an order is made or a resolution is passed for the winding up of the other Party; or

3.3.3. a provisional liquidator is appointed in respect of the other Party, an administration order is made in respect of the other Party, a receiver is appointed in respect of the other Party or all or any of its assets or if the other Party is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or if any voluntary arrangement is proposed under Section 1 of the Insolvency Act 1986 in respect of the other Party.

- 3.4 Either Party may end these terms with 30 days' notice to the other.
- 3.5 In the event of termination for any reason, the Client agrees to pay Etch for all unpaid amounts due for Services carried out prior to termination.

## **4. OBLIGATIONS**

- 4.1 Each Party undertakes to keep secure from third parties any passwords issued to the other.
- 4.2 Each Party undertakes fully to virus-check all data supplied to the other.
- 4.3 Each Party undertakes to comply with their respective obligations under the Data Protection Act 2018, and any similar legislation, in relation to the Services.

## **5. INTELLECTUAL PROPERTY AND INDEMNITIES**

- 5.1 All Intellectual Property Rights in all Deliverables for a Project created specifically for the Client by Etch will be assigned to the Client upon completion of that Project and payment of any and all sums due for the Project. At the Client's expense, Etch will enter into all agreements necessary to affect such assignment.
- 5.2 Where the Deliverables incorporate Retained Copyright, Etch grants the Client a non-exclusive, non-transferable, perpetual, royalty-free, worldwide right to use such Retained Copyright solely in connection with that Project.
- 5.3 Other than to the extent permitted within these terms, nothing in this clause shall assign to the Client any ownership rights or claims to any Third Party Copyright. The Client shall enter into appropriate licenses with Third Party Copyright holders and meet the costs thereof.
- 5.4 The Client agrees to indemnify Etch against all damages, liabilities, costs and expenses which Etch may incur or sustain including the costs of defending any suit arising from the use in a Deliverable of any material or data provided by or on behalf of the Client, or any act or omission by the Client, its employees or agents. The Client shall have control of the defence of any such action and all negotiations for its settlement or compromise. Etch shall cooperate reasonably with the Client, at the Client's expense, in the defence, settlement or compromise of any such action.
- 5.5 Etch agrees to indemnify the Client against all damages, liabilities, costs and expenses which the Client may incur or sustain including the costs of defending any suit arising from the use in a Deliverable of any material or data provided by or on behalf of Etch, or any act or omission by Etch, its employees or agents. Etch shall have control of the defence of any such action and all negotiations for its settlement or compromise. The Client shall cooperate reasonably with Etch, at Etch's expense, in the defence, settlement or compromise of any such action.
- 5.6 The Client hereby grants licences and consents to Etch without charge to use its Intellectual Property Rights to the extent necessary for the purpose of these terms.
- 5.7 The provisions of this Clause 5 shall survive the expiration or termination of these terms.

## **6. LIMITATION OF LIABILITY**

- 6.1 Neither Party is liable for any indirect loss, consequential loss, loss of profit, revenue or goodwill howsoever arising or for any wasted management time, failure to make anticipated savings or liability to any third party arising in any way in connection with these terms or otherwise, whether or not such loss has been discussed by the Parties pre-contract or for any account for profit, costs or expenses arising from such damage or loss.
- 6.2 Etch is not liable for any failure in respect of its obligations hereunder which result directly or indirectly from failure or interruption in software or services provided by third parties.
- 6.3 None of the clauses herein shall apply so as to restrict liability for death or personal injury resulting from the negligence of either Party or their appointed agents.
- 6.4 No matter how many claims are made and whatever the basis of such claims, each Party's maximum aggregate liability to the other in connection with the Services or otherwise and whether such claim arises in contract or in tort shall be the sum of the Prices subject to these terms.

## **7. ACCEPTANCE AND WARRANTIES**

- 7.1 All Deliverables are deemed to have been accepted by the Client if no issues concerning their conformity to the Specification have been raised within 14 days after their delivery by Etch ("Acceptance").
- 7.2 Etch warrants that for 30 days after Acceptance, Deliverables will materially conform to their Specification. If any Deliverable is modified in any way by any entity other than Etch this warranty shall immediately lapse.

## **8. CONFIDENTIALITY**

- 8.1 Etch undertakes not to divulge or otherwise disclose any information provided by the Client pursuant hereto unless such information (otherwise than due to a breach hereof) is to be incorporated in a Deliverable or at that time is already in the public domain.
- 8.2 Neither Party shall make any announcement or be involved in any form of publicity referring to any Project without prior written consent from the other Party, such consent not to be unreasonably withheld.

## **9. ENTIRE AGREEMENT AND SEVERANCE**

- 9.1 These terms form the entire agreement between the Parties. Nothing in this clause relieves either Party of liability for fraudulent misrepresentations and neither Party is entitled to any remedy for any negligent or innocent misrepresentation.
- 9.2 Any change, alteration or modification to these terms by Etch will be notified to the Client and will be deemed active within 30 days of this unless notified otherwise in writing by the client.
- 9.3 If any provision of these terms is void for whatever reason, it is deemed deleted and the remaining provisions shall continue in full effect.

## **10. ASSIGNMENT AND SUB-CONTRACTING**

- 10.1 Neither Party shall assign or otherwise transfer all or any of its rights, interests or obligations hereunder without the prior written consent of the other, save that either party may transfer its rights hereunder to any of its Affiliates.

## **11. NOTICES**

- 11.1 Any notice will be deemed to have been given if sent by first class post or e-mail to the Party concerned at its last known address. Notices sent by first class post will be deemed to have been given 7 days after despatch and notices sent by e-mail will be deemed to have been given on the day of despatch.

## **12. FORCE MAJEURE**

- 12.1 Neither Party shall be liable for any loss suffered by the other or be deemed to be in default for any delays or failures in performance hereunder resulting from acts or causes beyond its reasonable control, or from any acts of God, acts or regulations of any governmental or supra-national authority, war or national emergency, accident, fire, riots, strikes, lock-outs, labour troubles, illness, labour or transportation difficulties, or inability to obtain export or import licences.
- 12.2 Each Party will make every reasonable endeavour to overcome any such conditions but agrees that the unaffected Party may end these terms if they continue for a period in excess of 30 days.

## **13. WAIVER**

- 13.1 Any delay or forbearance by either Party in enforcing any provisions of these terms or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.

## **14. DISPUTE RESOLUTION**

- 14.1 If any dispute arises in connection with these terms, the parties agree to enter into mediation to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR.

## **15. HEADINGS**

- 15.1 Clause headings have been included in these terms for convenience only and shall not be considered part of, or be used in interpreting, these terms.

## **16. PERSONNEL**

- 16.1 Neither Party will, without the prior written consent of the other Party, during the course of these terms or within 12 months of their termination, solicit, employ or make any offer of employment to any member of the other's employees or agents.

16.2 In the event of a breach of this clause, the defaulting Party shall pay to the other, the greater of; a sum equivalent to purchasing the services of the employee or agent or the value of the income that would be generated from that employee or agent for a period of 24 months, or such lesser sum as the Parties may agree. This sum will be payable by way of liquidated damages and is agreed by the Parties to represent fair compensation in such event.

## **17. GOVERNING LAW**

17.1 These terms shall be governed by the laws of England and the Parties submit to the exclusive jurisdiction of the Courts of England and Wales.