

### 1.1 Quotes & Prices

**1.1.1.** All quotes/estimates are valid for 30 days from the date of submission.

**1.1.2.** Quotes/estimates are based on the information provided by the Client, including but not limited to detail on quantities, structure, scope and functionality. Any quote/estimate may therefore be subject to change should the client's requirements change at any time.

**1.1.3.** Unless otherwise stated, stock images, delivery and VAT will be charged extra.

**1.1.4.** If a retainer or fixed project fee has not been agreed for the term of a contract, the standard hourly rate will apply.

**1.1.5.** Flygun Creative Limited reserves the right to alter the hourly rate at any time as business needs dictate.

**1.1.6.** Quotes/estimates are based on Flygun Creative Limited's current costs of production and unless otherwise agreed are subject to amendment on or at any time after acceptance to meet any rise or fall in such costs.

**1.1.7.** Any estimates provided by Flygun Creative Limited as to the time of completion or performance of its services (whether completion of the whole or a part of those services) shall be estimates only and time shall not be of the essence.

**1.1.8.** Any stated timescale is reliant upon the client providing all required information, content, copy or images within the time set out at project initiation.

### 1.2 Methods

**1.2.1.** Flygun Creative Limited reserves the right to sub-contract the fulfilment of an order or any part thereof.

**1.2.2.** Any images supplied electronically will be incorporated into designs without charge provided that they are of suitable quality. All images need to be supplied as EPS illustrator vectors for logos and Photoshop tiffs or JPEGs (300dpi minimum) for pictures. Any logos that need to be re-drawn will be charged extra at the agreed hourly rate. Images sourced from external image libraries may incur additional licence/royalty charges payable by the client. Any such images that require royalty licences will be made clear to the client by way of writing or email.

**1.2.3.** Should the client supply text, artwork or imagery, Flygun Creative Limited are not obliged to edit, check or guarantee the correctness thereof in any way whatsoever the end product. Therefore it shall be made at the entire risk of the client. Where relevant, copy proofing or copy writing may be required and is subject to additional costs.

**1.2.4.** Flygun Creative Limited shall be indemnified by the Client in respect of any claims, costs and expenses arising out of any libellous matter or any infringement of copyright, patent design or any other proprietary or personal rights contained in any material supplied by the Client. The indemnity shall extend to any amounts paid on a lawyer's advice in settlement of any claim.

**1.2.5.** Origination and/or conceptual work or any copyright subsisting therein shall remain the property of Flygun Creative Limited unless otherwise agreed in writing with the Client.

**1.2.6.** The Client's property and property supplied to Flygun Creative Limited on behalf of the Client, while it is in the possession of Flygun Creative Limited or in transit to or from the Client, will be deemed to be at Client's risk unless otherwise agreed and the Client should insure accordingly.

**1.2.7.** Flygun Creative Limited shall not be required to use, print, upload or hold any matter which in its opinion is or may be of an illegal or libellous nature or an infringement of the proprietary or other rights of a third party.

### 1.3 Invoices & Payment

**1.3.1.** Payment must be made no more than 21 days after date of invoice unless otherwise agreed in writing in advance.

**1.3.2.** We understand and will exercise our statutory right to add interest under the Late Payment Of Commercial Debts (Interest) Act 1998 amended by European Directive 2011/7/EU if we are not paid according to our payment terms. (Guidance in relation to the 1998 Act (as amended) is available through the Department for Business, Innovation and Skills website.

**1.3.3.** All work remains intellectually copyrighted to Flygun Creative Limited until settlement of relevant fee account or as otherwise agreed in writing with the client.

**1.3.4.** All invoices are subject to UK VAT at the current rate, unless a valid exemption certificate is provided.

**1.3.5.** All payments must be in UK Pounds Sterling.

**1.3.6.** All work completed after project inception will be billed as it is completed at the end of every calendar month as Work in Progress (WIP) until the conclusion of the project or otherwise agreed.

**1.3.7.** If Flygun Creative Limited incurs any costs as a result of the Client's neglect or default, Flygun Creative Limited may charge those costs to the Client in addition to the contract price.

**1.3.8.** The Client shall pay for any preliminary work which is produced at his/her request, whether experimentally or otherwise. A 50% rejection fee is applicable on all designs executed by Flygun Creative Limited should the Client cancel their contract/order or unless otherwise agreed.

**1.3.9.** When payment is overdue, Flygun Creative Limited may suspend work, service and/or delivery without notice and without prejudice to any other legal remedy until due payment has been made. Furthermore, any work started but incomplete may be suspended and payment therefore becomes immediately due and payable, notwithstanding anything expressed herein, and any monies in respect of.

**1.3.10.** Flygun Creative Limited may require payment in advance, or a deposit of at least 25% of a quote/estimate total prior to instigating work on an order, particularly but not limited to the following situations: new clients; clients with a poor payment history; large, lengthy or complex projects. Where a deposit is required, the balance shall be due upon completion of the work, unless otherwise agreed in writing in advance.

**1.3.11.** If your payment is returned by the bank as unpaid for any reason, you will be liable for a penalty non payment charge of £50.00 for each occurrence.

### 1.4 Proofing

**1.4.1.** Proofs, samples, specimens, sketches, photographs, links or any representation, whether partial or total, of the finished article in whatever form may be submitted to the Client for approval.

**1.4.2.** After approval the Client shall have no claim against Flygun Creative Limited for errors in the exemplar as approved by them.

### 1.5 Insolvency

**1.5.1.** If the Client ceases to pay his debts in the ordinary course of business or cannot pay his debts as they become due or is deemed to be unable to pay its debts or have a winding-up petition issued against it or being a person who commits an act of bankruptcy or has a bankruptcy petition issued against him, Flygun Creative Limited without prejudice to other remedies shall:

**1.5.1.1.** Have the right not to proceed further with the contract or any other work for the Client and be entitled to charge for work already carried out (whether completed or not) and materials purchased for the Client. Such charge to be an immediate debt due to him.

**1.5.1.2.** 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 in such manner and at such price as it thinks fit and to apply the proceeds towards such debts.

### 1.6 Force Majeure

**1.6.1.** Flygun Creative Limited shall be under no liability if it shall be unable to carry out any provision of the contract for any reason beyond its control including (without limiting the foregoing) Act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a dispute or owing to any inability to procure materials required for the performance of the contract. During the continuance of such a contingency the Client may by written notice to Flygun Creative Limited elect 'to terminate the contract and pay for work done and materials used', but subject there to shall otherwise accept delivery when available.

### 1.7 Information provided by client

**1.7.1.** You warrant that the name, address and payment information provided when you place your order with Flygun Creative Limited will be correct and you agree to notify Flygun Creative Limited of any changes in the name, address and/or payment details.

**1.7.2.** You agree that Flygun Creative Limited may disclose your name and address where any enquiries are made after your express permission is sought.

**1.7.3.** You warrant that you possess the legal right and ability to enter into this Agreement and to use Flygun Creative Limited's services in accordance with this Agreement.

### 1.8 Indemnity

**1.8.1.** You shall indemnify us and keep us indemnified and hold us harmless from all liabilities, actions, claims, proceedings, losses, expenses (including reasonable legal costs and expenses), costs and damages, howsoever suffered or incurred by us in consequences of your breach or non-observance of this Agreement, or arising out of claims based upon or relating to our work for you or any claim brought against us by a third party resulting from the provision of any Services to you and your use of them.

**1.8.2.** Flygun Creative Limited will notify you promptly of any claim for which Flygun Creative Limited seeks specific indemnification at the currently supplied address. Flygun Creative Limited will afford you the opportunity to participate in the defence of such claim, provided that your participation will not be conducted in a manner prejudicial to Flygun Creative Limited's interests, as reasonably determined by Flygun Creative Limited and/or its legal representatives.

### 1.9 Limitation of Liability

**1.9.1.** All conditions, terms, representations and warranties relating to the Services supplied under this agreement, whether imposed by statute or operation of law or otherwise, that are not expressly stated in these terms and conditions including, without limitation, the implied warranty of satisfactory quality and fitness for a particular purpose are hereby excluded, are subject always to sub clause 1.9.2.

**1.9.2.** Nothing in these terms and conditions shall exclude our liability for death or personal injury resulting from our negligence.

**1.9.3.** In any event, no claim against Flygun Creative Limited shall be brought unless you have notified Flygun Creative Limited of the claim within one year of the issue arising.

**1.9.4.** In no event shall Flygun Creative Limited be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, for any loss of business, contracts, anticipated savings or profits or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by Flygun Creative Limited's negligence or the negligence of its servants or agents or otherwise) which arise out of or in connection with the provision of any goods or services by Flygun Creative Limited.

**1.9.5.** Flygun Creative Limited warrants that its services will be provided using reasonable care and skill. Where Flygun Creative Limited supplies any goods supplied by a third party, Flygun Creative Limited does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign the benefit of any warranty, guarantee or indemnity given by the supplier of the goods to Flygun Creative Limited.

### 1.10 General Terms

**1.10.1.** These conditions and all other express terms of the contract shall be governed and constructed in accordance with the laws of England and you hereby submit to the non-exclusive jurisdiction of the English courts.

**1.10.2.** Flygun Creative Limited shall not be liable or deemed to be in breach of contract by reason of any delay in performing, or failure to perform, any of its obligations if the delay or failure was due to any cause beyond its reasonable control.

**1.10.3.** All quotes/estimates, briefs and other client/agency documents are commercially confidential and may not be disclosed to third parties without prior written agreement.

**1.10.4.** These terms and conditions, together with any documents expressly referred to in them, contain the entire Agreement between Flygun Creative Limited and the Client relating to the

subject matter covered and supersede any previous agreements, arrangements, undertakings, proposals or contemporaneous communications, written or oral: between Flygun Creative Limited and the Client in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, you confirm that you have not relied on any representation other than those expressly stated in these terms and conditions and you agree that you shall have no remedy in respect of any misrepresentation which has not been expressly made in this Agreement.

**1.10.5.** Any notice to be given by either party to the other may be sent by either email or post to the address of the other party as appearing in this Agreement or ancillary application forms or such other address as such party may from time to time have communicated to the other in writing, and if sent by email shall unless the contrary is proved, be deemed to be received on the day it was sent, or if sent by post shall be deemed to be served two days following the date of posting.

**1.10.6.** Headings, numbering and summaries are included in this Agreement for convenience only and shall not affect the construction or interpretation of this Agreement.

**1.10.7.** You acknowledge that no joint venture, partnership, employment, or agency relationship exists between you and Flygun Creative Limited as a result of your use of these services. You agree not to hold yourself out as a representative, agent or employee of Flygun Creative Limited. You agree that Flygun Creative Limited will not be liable by reason of any representation, act or omission to act by you.

**1.10.8.** Flygun Creative Limited reserves the right to revise, alter, modify or amend these terms and conditions, and any of our other policies and agreements at any time and in any manner without prior notification. Notice of any revision, amendment, or modification will be posted in accordance with our Terms and Conditions.

**1.10.9.** If any of the provisions of this Agreement are judged to be illegal or unenforceable, the remainder shall continue in full force and the effect of the remainder of them will be not be deemed to be prejudiced.

**1.10.10.** This Agreement takes effect on the date on which you order our services. Acceptance of these terms is an absolute condition of the Client requesting work. An order constitutes acceptance of all our Terms and Conditions.

**1.10.11.** You shall not assign this Agreement or any benefits or interests arising under this Agreement without Flygun Creative Limited's prior written permission.

### Print Terms & Conditions

#### 2.1 Proofing

**2.1.1.** A PDF or digital proof will be sent to the Client for approval prior to any print job. Where applicable and required, a full colour proof will be supplied to the client for mark up and/or approval. It is the clients responsibility unless otherwise stated or agreed for all work including all visual materials including imagery and copy to be checked and verified prior to print. No responsibility can be held with Flygun Creative Limited once a client has approved works.

#### 2.2 Print

**2.2.1.** Standing matter and printers' materials of any kind are effaced or disposed of immediately after the order is executed unless written arrangements are made for retention in advance.

**2.2.2.** Flygun Creative Limited shall not be required to work to tolerances closer than those applicable to the materials obtained by him in the ordinary course of trade. No liability shall arise from variation in the standard, quality and performance of such materials.

**2.2.3.** Every endeavour will be made to deliver the correct quantity ordered, but estimates are conditional upon margins of 5% for work in one colour and 10% for other work being allowed for overs or shortage (4% and 8% respectively for quantities exceeding 50,000) the same to be charged or deducted.

#### 2.3 Delivery

**2.3.1.** Goods will be dispatched or must be collected by the Client when ready and the Client shall not refuse or delay delivery.

**2.3.2.** Advice of damage, delay or partial loss of goods in transit or of non-delivery must be given in writing to Flygun Creative Limited and the carrier within three clear days of delivery (or, in the case of non-delivery, within 28 days of despatch of the goods) and any claim in respect thereof must be made in writing to Flygun Creative Limited and the carrier within seven days of delivery (or, in the case of non-delivery, within 42 days of despatch). All other complaints and claims must be made in writing to Flygun Creative Limited within 28 days of delivery. Flygun Creative Limited shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Client proves that it was not possible to comply with the requirements and advice (where required) was given and the claim made as soon as reasonably possible.

**2.3.3.** Goods completed but not delivered shall thereupon forthwith become due and payable. Moreover after the expiration of 14 days notice Flygun Creative Limited may exercise a general lien on all the Client's goods and property in our hands and may dispose of such goods and property as they see fit and apply the proceeds towards such debts. Flygun Creative Limited may also elect to cancel further work and/or not produce any unmade balance of such contract and recover from the Client any losses sustained by so doing.

**2.3.4.** Flygun Creative Limited shall not be liable for any loss to the Client arising from delay in transit howsoever caused.

### Digital Media Terms & Conditions

#### 3.1 Programming

**3.1.1.** Flygun Creative Limited can only program sites to be as secure as reasonably possible at the time of delivery and can not offer indemnity against future threats/developments.

**3.1.2.** Once Flygun Creative Limited has deemed a project to be complete, any amendments will be charged at Flygun Creative Limited's standard hourly rate unless otherwise agreed.

**3.1.3.** Flygun Creative Limited develops websites for compatibility with Google Chrome (Latest), Mozilla Firefox (Latest), Microsoft Edge, Microsoft Internet Explorer 10 and 11, Safari on Apple MacOS (Latest): Not all previous versions or every browser. If further compatibility is required, Flygun Creative Limited must be advised at the outset.

#### 3.2 Ownership

**3.2.1.** The ownership of the web pages and copyright therein shall remain with Flygun Creative Limited until payment in full has been received for all sums owing. Once payment has been received, ownership and copyright shall pass to the Client for page text and graphics specific to the Client.

**3.2.2.** Ownership of all code used in processing web pages shall remain with Flygun Creative Limited and it is expressly agreed that the use of such code in processing the web pages does not confer any passing of title from Flygun Creative Limited to the Client.

### 3.3 Content

**3.3.1.** The Client should supply the copy for their web pages in a clear and usable permanent or electronic form and shall be entirely responsible for the content of those web pages or as agreed.

**3.3.2.** All images uploaded to websites by the Client (via CMS, FTP or other) should be optimised (compressed file size). Flygun Creative Limited can provide advice on the best image editing software packages, but accepts no responsibility for the performance or compatibility of third-party software, or the results they produce.

**3.3.3.** When a test link is provided, it is the responsibility of the Client to test the functionality, read and check all copy, as well as approve the design and images used before approval is given.

**3.3.4.** Flygun Creative Limited can provide legal disclaimers and privacy policies at an agreed fee; but it is the responsibility of the Client to confirm with their own legal advisers that these meet their individual requirements, as Flygun Creative Limited accepts no responsibility for their accuracy, relevance or currency.

### Website Hosting and Email Terms & Conditions

#### Summary

Flygun Creative Limited offers website hosting and database hosting services through the use of third party providers and is subject to requirements set out in these terms and conditions and any other relevant terms and conditions, policies and notices which may be applicable to the supply of hosting services.

Below is a summary of the main points covered in these terms:

Whilst we and our suppliers will always endeavour to give you the best possible level of service, we cannot guarantee 100% availability of service.

Flygun Creative Limited and our suppliers accept no responsibility for any losses caused through a loss of service.

Your services will be removed if you fail to pay in time or misuse the services provided.

Flygun Creative Limited will not be liable for any costs to restore your service once it has been removed. Specifically, any websites with databases will require reprogramming once they have been removed from their original server.

Any work undertaken by Flygun Creative Limited at the request of the Client will be charged at the standard hourly rate unless otherwise agreed, including investigations regarding problems or loss of service that are not due to Flygun Creative Limited or our suppliers. Flygun Creative Limited should only be contacted after you and your IT professional/advisor have established that any problems are not due to you or your systems.

#### 4.1 Website & Email Content & Use

**4.1.1.** We make no representation and give no warranty as to the accuracy or quality of information received by any person via the Server and we shall have no liability for any loss or damage to any data stored on the Server. You warrant the accuracy, truthfulness and reliability of any information (including, where applicable, statements of opinion or advice) which you place or allow to be placed on your web pages. You warrant that you are authorised to promote and/or provide any information which you promote and/or provide on your web pages (for example if you are providing financial information, that you hold any necessary authorisation under all relevant legislation including the Financial Services Acts).

**4.1.2.** You represent, undertake and warrant to Flygun Creative Limited that you will use the website allocated to you only for lawful purposes. In particular, you represent, warrant and undertake to us that:

**4.1.2.1.** You will not use the Server in any manner which infringes any law or regulation or which infringes the rights of any third party, nor will you authorise or permit any other person to do so.

**4.1.2.2.** You will not host, post, publish, disseminate, link to or transmit:

**4.1.2.2.1.** Any material or information which is unlawful, infringing, threatening, abusive, malicious, defamatory, obscene, indecent, blasphemous, profane or otherwise objectionable in any way.

**4.1.2.2.2.** Any material containing a virus or other hostile computer program.

**4.1.2.2.3.** Any material or information which constitutes, or encourages the commission of a criminal offence, or which threatens, harasses, stalks, abuses, disrupts or violates the legal rights (including rights of privacy and publicity) of others, or which infringes any patent, trade mark, design right, copyright or any other intellectual property right or similar rights of any person which may subsist under the laws of any jurisdiction.

**4.1.2.3.** You will not send bulk email, whether opt-in or otherwise, from our network. Nor will you promote a site hosted on our suppliers network using bulk email.

**4.1.2.4.** You will not employ programs which consume excessive system resources, including but not limited to processor cycles and memory.

**4.1.2.5.** You shall observe the procedures which we may from time to time prescribe and you shall make no use of the Server which is detrimental to other customers.

**4.1.2.6.** You shall procure that all mail is sent in accordance with applicable legislation (including data protection legislation) and in a secure manner.

**4.1.2.7.** In the case of an individual User, you warrant that you are at least 16 years of age and if the User is a company, you warrant that the Server will not be used by anyone under the age of 16 years.

**4.1.2.8.** You are entirely responsible for any civil or criminal liability that is incurred as a result of any use of your web pages. If you post or allow to be posted a defamatory or libellous message, it is you that will be deemed to have published it and you shall be liable for the consequences of it.

**4.1.3.** We and our suppliers reserve the right to remove any material which they deem inappropriate from your web site without notice (specifically, but not restricted to, Warez and illegal MP3 content).

**4.1.4.** If you advertise or offer to sell goods or services via your web pages, you undertake to provide goods in conformity with any description and warranties made. You agree to comply with all relevant legislation including Advertising and Broadcast regulations, Consumer Credit Acts and Trades Descriptions Acts. If you are advertising goods in the course of a trade or business this must clearly be so stated.

## **4.2 Charges**

**4.2.1.** All charges payable by you for the Services shall be in accordance with the scale of charges and rates published from time to time by us and shall be due and payable in advance of their service provision without any set-off or other deduction. We reserve the right to change pricing at any time, although all pricing is guaranteed for the current subscription period.

**4.2.2.** Payment is due each anniversary month, quarter or year following the date the Services were established until closure notice is given.

## **5.1 Photography & Copyright**

**5.1.1.** All photographic works remain the property of Flygun Creative Limited and any 3rd party supplier/s until paid for in full or otherwise stated. Any imagery that has royalty protected properties will be notified to the client in writing where an agreement on cost and useage will be made clear in writing also.

**5.1.2.** Where Royalty Free Photography is supplied or purchased it will be stated in writing at quote stage. By accepting the terms of the quote you are entering into an agreement that you fully understand the ownership and copyright issues of any commissioned or purchased photographic images.

**5.1.3.** Use or sharing of photographic material without written consent from Flygun Creative Limited or our photographic supplier/s is strictly prohibited. Any misuse or violation of this agreement will be notified in writing and the appropriate action will be taken to remove such materials and charges may apply.