

TERMS AND CONDITIONS

Essential information. Please read the following terms and conditions. Your acceptance of these terms are an absolute condition of this website and the services of XA Digital.

General terms and conditions

These terms and conditions form the trading agreement between the XA Digital (“we” or “us”) and the Client (“you”).

1. CHARGES

- a) Unless agreed otherwise in writing or by email, we will charge you for all work produced at our current standard charge out rates (if there are any changes to such rates you will be notified by emailed, writing or telephone.
- B) All rates and fees are exclusive of VAT, which will be charged in addition at the prevailing rate.
- C) When up or down loading files, the time scale is not charged.
- D) All travel expenses if incurred will be charged at the hourly rate of the corresponding job and the amount charged will be the travelling time to and from the clients premises only.

2. NEW CLIENTS: INITIAL TRADING PERIOD

With all new clients, we request payment on receipt of invoice for the first two months of active trading. Thereafter, we will revert to our standard terms of payment (see Clause 3).

- A) After this trial period and Clause 3 is introduced, it is still up to our discretion and integrity the credit terms agreed.

3. STANDARD TERMS OF PAYMENT

- a) You will make punctual payment to us of all invoices and will indemnify us in full in respect of any third party expenses suffered or incurred by us pursuant to your instructions.
- B) Invoices will be paid by you (without any deduction by way of set-off or counter claim or otherwise) as follows:
 - (i) Fees: 30 days from date of invoice.
 - (ii) Production and other services: 30 days from date of invoice
 - (iii) For any services where the contractor or supplier requires payment before work commences, our invoice covering the same shall be paid before work commences.
- C) For services where the contractor or supplier has the right to withhold consent for work used, or other display before final payment, our invoice covering the same shall be paid within seven days from date of invoice and in any event in cleared funds before the planned date of publication, or other display.
- D) On receipt of your approval for any production or artwork, we may issue invoices for stage payments of the estimated cost thereof and the invoices shall be payable within 30 days from date of invoice.
- E) Out of pocket expenses will be charged at cost. These include air and rail fares, hotels and sustenance. Car travel will be charged at AA rates. Normal office disbursements such as post, telephone and fax will not be charged.
- F) Cancellation work or production (see clause 6).

4. OVERDUE ACCOUNTS

- a) If payment of invoices is not made when due, we reserve the right to charge interest on overdue amounts, interest to be calculated at the rate of 4% per year above the base lending rate from time to time of Royal Bank of Scotland Plc. Interest will accrue from the due date until payment is made.
- B) We reserve the right to retain all work, materials and any other items in our possession relating to any matter until all invoices are paid in full.
- C) Any queries in respect of an invoice must be raised within 14 days of the date of the invoice. After this date it will be deemed that the invoice has been accepted by you (except in the case of manifest error).

5. CREDIT INSURANCE

We take out insurance against credit risks and all our clients must be acceptable to our insurers. In the event of our insurers revising or withdrawing the normal insurance cover in respect of you, we may revise our terms of payment and may require payment in advance.

6. CHANGE AND/OR CANCELLATION OF WORK

- a) In the event of change or cancellation, we reserve the right to charge you for all costs of complying with your request, which may include our expenses, production costs, cancellation fees, and our fees and commission in respect of such plans, schedules and work-in-progress.
- B) If the live job has been worked on or even finished, the hourly rate will apply and you will be charged accordingly.

7. INTELLECTUAL PROPERTY AND COPYRIGHT

- a) The intellectual property rights (including, where appropriate, copyright and design rights) in all works created or commissioned by us and used under this agreement shall be vested in us whenever possible.
- C) Until full payment of the invoice, all files are copyright to "XA Digital".

8. LEGAL LIABILITY

- a) "XA Digital" will not be liable for any discrepancies or mistakes, which later have a financial detriment to you the client. All work produced by us should be checked and signed off before any further action is taken with the files.
- B) We take no responsibility for work not checked and signed. If checked and incorrect we will do our utmost to verify the mistake.
- C) We are not liable for any financial compensation by a third party.
- D) We shall not be liable for any costs, loss or damage arising from our failure to fulfill our obligations where failure results from circumstances wholly or in part beyond our control including, for example, uploading or downloading files. Viruses or equivalent computer circumstances. We advise you to take out the appropriate insurance cover where necessary.
- E) We shall not be liable for any consequential or economic loss (whether for loss of profit or otherwise) and our entire liability under or in connection with this Trading Agreement shall not exceed the associated fees and/or charges received by us under this Trading Agreement.
- F) Nothing in this Trading Agreement shall limit or exclude our liability for death or personal injury to the extent that it is caused by our negligence.

9. DURATION

- a) This Agreement shall commence on the start date specified below and shall continue until terminated by either party by giving to the other not less than three month's notice in writing. Unless specified by email or the signed contract or agreement. Verbal agreements included.
- B) Notwithstanding clause 9a) we may terminate this Trading Agreement on written notice if:
 - (i) You make any voluntary arrangement with your creditors or become subject to an administration order or (being an individual or firm) become bankrupt or (being a company) go into liquidation
 - (ii) A receiver is appointed over any of your assets
 - (iii) You cease or threaten to cease to carry on business.

10. SECURITY

- a) We will take the utmost care in securing complete confidentiality of you, your client and anybody who might be in a compromising situation.
- B) All our folders are uniquely secure so no access from other outside sources can compromise our or your integrity.
- C) In the case of anybody who makes an advance to you or your clients on the basis of work produced by ourselves, please notify us and legal proceedings might impend.

Digital Design and Build Terms

DEFINITIONS AND INTERPRETATION

In these terms ("Terms") the following words and phrases will, unless the context otherwise requires, have the following meanings:

Associated Company means any subsidiary or holding company, or subsidiary of a holding company (as subsidiary and holding company are defined in the Companies Act 1985, as amended);

Confidential Information the trade secrets or confidential or proprietary information of XA Digital or the Customer (as the case may be), but excluding any information: (a) which is publicly known or becomes publicly known other than by a breach of these Terms or any other duty of confidentiality; (b) which, when it was first disclosed to the other party, was already known by that party and that party was at the time of disclosure free to disclose; or (c) which, after being disclosed to the other party by XA Digital or the Customer (as the case may be), was disclosed to that party again by a third party at liberty to disclose it without restriction;

Content all text, graphics, logos, photographs, images, moving images, sound, illustrations, and other materials featured, displayed or used or to be featured, displayed or used in or in relation to the Services provided by the Customer, XA Digital or third parties as the case may be;

Contract the contract constituted by a Customer accepting a sow in accordance with clause 1;

Customer a person that accepts a sow;

Deliverable an asset to be delivered as part of the Services other than content including a website, intranet or extranet to be developed by XA Digital for the

Customer in accordance with a sow;

Deliverable Design the graphical and visual design of a Deliverable as described in the relevant sow;

XA Digital, a Company, incorporated in England and Wales with registered number 08558997 , whose registered office is

Suite 6 141/143 South Road, Haywards Heath, West Sussex, RH16 4LZ

Customer by XA Digital;

Services the services specified in the relevant sow, which may include strategic consultancy, digital creative services, including online media, PR, email marketing, viral marketing and seeding, the development of a Deliverable, website maintenance and hosting;

Start Date the date that the relevant sow is accepted by the Customer;

Third Party Software any computer program comprised in a Deliverable that is provided by a third party;

Web Pages the web pages, if applicable, of a Deliverable containing the Content described in the sow; and

Year a period of 12 months from the Start Date and each anniversary of the Start Date.

In these Terms, unless the context otherwise requires:

(a) References to a party mean XA Digital or the Customer as the case may be;

(b) References to any statute, statutory provision or statutory instrument or order include:

i. References to that statute, statutory provision or statutory instrument or order as from time to time amended, extended, consolidated or re-enacted; and

ii. All rules, regulations, statutory instruments or orders made under them, as from time to time amended, extended, consolidated or re-enacted;

(c) Words importing a gender will include all genders;

(d) The Clause headings are for convenience of reference only and will not affect the construction or interpretation of these Terms;

(e) References to any person include references to any human being, company, body, corporate, association, joint venture, partnership, trust and any legal entity capable of suing and being sued and references to the singular will include the plural;

(f) "Including" will be understood to mean "including without limitation" and "includes" and "include" will be understood similarly; and

(g) In the case of conflict or ambiguity between any these Terms and any provision of a sow the provisions of the sow will take precedence.

1 CONTRACT FOR PROVISION OF SERVICES

1.1 The acceptance in writing (including by email) of a sow by the Customer will constitute a binding contract between the Customer and XA Digital for the provision of the Services on these Terms.

1.2 The Contract will take effect from the Start Date and, subject to the completion of the development of any Deliverable included in the Services, will continue until either party serves not less than 3 months' written notice on the other expiring on any anniversary of the Start Date or, if

later, the anniversary of any fixed period of website hosting specified in the sow subject always to early termination under Clause 11.

2 SUPPLY OF SERVICES

2.1 XA Digital will provide the Services and any Deliverable to the Customer with reasonable care and skill and in accordance with the relevant sow.

2.2 XA Digital will use all reasonable efforts to adhere to the provisions of any timetable included in the sow.

2.3 The Customer will provide all such information, material, facilities and other assistance as XA Digital may reasonably request in order to assist XA Digital to provide the Services or otherwise perform its obligations under the sow.

3 LICENCE

3.1 XA Digital grants a non-exclusive, royalty free licence to the Customer to use, modify and, subject to clause 3.2, sub-licence the XA Digital Software for the full period of the copyright in the XA Digital Software.

3.2 The Customer may sub-licence the XA Digital Software but only after the termination of the Contract.

3.3 Third Party Software will be supplied in accordance with the relevant licensor's standard terms.

3.4 The Customer may not assign the benefit or burden of the licence granted in clause 3.1.

4 CHARGES

4.1 The Customer will pay the amounts specified in the sow (as varied under clause 4.2) within 30 days of the date of the invoice. All such amounts are (unless otherwise stated) expressed exclusive of any applicable value added tax (VAT) and all other taxes and duties, which will be paid by the Customer.

4.2 Unless provided to the contrary in the sow, the charges in the sow will apply until the 31 December following the Start Date and thereafter the applicable charges will be as set out in XA Digital then current rate card.

4.3 Where the Customer reasonably disputes any payment it will be entitled to withhold payment of the disputed amount pending resolution of the dispute but will pay the undisputed amount in accordance with these Terms.

4.4 The Customer will reimburse all expenses reasonably incurred by XA Digital in performing the Services subject to the provision of valid VAT invoices.

5 WARRANTIES

5.1 XA Digital warrants that the XA Digital Software comprised in each Deliverable will conform in all material respects to the sow for a period of 90 days from delivery or, if acceptance testing is required, the date of successful completion thereof (Warranty Period). If, within the Warranty Period, the Customer notifies

XA Digital in writing of any defect or fault in the XA Digital Software in consequence of which it fails to conform in all material respects to the sow, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the XA Digital Software or used it in breach of the sow or these Terms, for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by XA Digital, XA Digital will, at our option, do one of the following:

6.2.1 repair the XA Digital Software; or

6.2.2 replace the XA Digital Software, provided the Customer provides all information reasonably required by XA Digital to resolve the defect or fault, including sufficient information to enable XA Digital to re-create the defect or fault.

5.2 XA Digital does not warrant that the use of the XA Digital Software or the Third Party Software will be uninterrupted or error-free.

5.3 Subject to clause 7.2, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into these Terms, whether by statute, common

law or otherwise, are excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

6.4 Each of the parties will use all reasonable commercial efforts to ensure that it does not introduce any virus or other element designed to disrupt the orderly operation of, or impair the integrity of computer programs and systems into the other's computer programs and/or systems.

6 CONFIDENTIALITY

6.1 Neither party may disclose to any other person the contents of an sow or use or disclose any of the Confidential Information of the other except:

- (a) When required to do so by law or any regulatory authority; and
- (b) To its (or any of its Associated Companies') employees, contractors, directors, agents or advisers whose duties reasonably require such disclosure, on condition that the party making such disclosure ensures that each such person is informed of the obligations of confidentiality under these Terms and complies with those obligations as if they were bound by them.

7 LIABILITY

7.1 Except as expressly stated in clause 7.2:

- (a) XA Digital will have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, which fall within the following categories:
 - (i) Special damage even though XA Digital was aware of the circumstances in which such special damage could arise;
 - (ii) Loss of profits, anticipated savings, business opportunity or goodwill;
 - (iii) Loss of data; and
 - (iv) Infringement of copyright provided XA Digital has made all reasonable efforts to avoid such infringement.

(b) The total liability of XA Digital, whether in contract, tort or otherwise and whether in connection with an sow, these Terms or otherwise, will in no circumstances exceed a sum equal to the amounts payable to XA Digital under the sow in the 12 months immediately before the cause of action arose; and

(c) The Customer acknowledges that no representations were made prior to entering into these Terms and agrees that, in entering into these Terms, it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the sow. The Customer will have no remedy in respect of any representation (whether written or oral) made to it on which it relied in entering into these Terms and XA Digital will have no liability otherwise than pursuant to these Terms.

7.2 XA Digital will be liable for death or personal injury resulting from its negligence or that of its employees whilst acting in the course of their employment and the scope of their authority, for fraud and fraudulent misrepresentations and for any other loss or damage in respect of which liability cannot lawfully be excluded.

7.3 Notice periods

XA Digital will not be liable for any claim arising under these Terms unless the Customer gives XA Digital written notice of the claim within 6 months of becoming aware of the circumstances giving rise to the claim or, if earlier, 6 months from the time the Customer ought reasonably to have become aware of such circumstances.

7.4 General

The parties acknowledge that, having regard to all the circumstances, the provisions of this Clause are fair and reasonable.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 Subject to payment of the relevant amounts, XA Digital assigns all rights, title and interest (including all Intellectual Property Rights) in the Deliverable Design, the Web Pages and any XA Digital Content (but excluding XA Digital Software, Third Party Software and any third party Content) to the Customer with full title guarantee.

8.2 XA Digital will not use or re-create the look and feel of the Deliverable or anything substantially similar to it.

8.3 XA Digital will use all reasonable efforts to assign third party Content to the Customer.

8.4 XA Digital acknowledges that all Intellectual Property Rights in the Customer Content and any modification to it belong and will belong to the Customer, and XA Digital will have no rights in or to the Customer Content other than the right to use it in accordance with these Terms.

8.5 The Customer acknowledges that all Intellectual Property Rights in the XA Digital Software and any modification to it belong and will belong to XA Digital, and the Customer will have no rights in or to the XA Digital Software other than the right to use it in accordance with these Terms.

8.6 The Customer acknowledges that all Intellectual Property Rights in the Third Party Software and any modification to it belong and will belong to relevant licensor, and the Customer will have no rights in or to the Third Party Software other than the right to use it in accordance with these Terms.

8.7 XA Digital will at its own expense defend the Customer or, at XA Digital option, settle any claim or action brought against the Customer alleging that the possession, use, development, modification or maintenance of the XA Digital Software (or any part thereof) in accordance with of these Terms infringes the Intellectual Property Rights of a third party (Infringement Claim) and will be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Customer as a result of or in connection with any such Infringement Claim. This clause 8.7 will not apply where the Infringement Claim in question:

- (a) Relates to XA Digital Software produced to a specification provided by the Customer; or
- (b) Is in respect of Customer Content; or
- (c) Is attributable to possession, use, development, modification or maintenance of the XA Digital Software (or any part thereof) by the Customer other than in accordance with of the sow or these Terms.

8.8 Clause 8.7 is conditional on:

- (a) The Customer notifying XA Digital in writing, as soon as reasonably practicable, of any Infringement Claim of which it has notice;
- (b) The Customer not making any admission as to liability or compromise or agreeing to any settlement of any Infringement Claim without the prior written consent of XA Digital, which consent will not be unreasonably withheld or delayed; and
- (c) XA Digital having, at its own expense, the conduct of or the right to settle all negotiations and litigation arising from any Infringement Claim and the Customer giving XA Digital all reasonable assistance in connection with those negotiations and such litigation at XA Digital request and expense.

8.9 If any Infringement Claim is made, or in XA Digital reasonable opinion is likely to be made, against the Customer, XA Digital may at its sole option and expense:

- (a) Procure for the Customer the right to continue using the XA Digital Software (or any part thereof) in accordance with these Terms; or
- (b) Modify the XA Digital Software so that it ceases to be infringing; or
- (c) Replace the XA Digital Software with non-infringing software; or
- (d) Terminate the Contract immediately by notice in writing to the Customer and refund any of the charges paid by the Customer with respect to the Deliverable as at the date of termination (less a reasonable sum in respect of the Customer's use of the XA Digital Software to the date of termination) on return of the XA Digital Software and all copies thereof, provided that if XA Digital modifies or replaces the XA Digital Software, the modified or replacement software must comply with the warranties contained in clause 6.2 and the Customer will have the same rights in respect thereof as it would have had under those clauses had the references to the date of these Terms been references to the date on which such modification or replacement was made.

8.10 The Customer will indemnify XA Digital against all costs, claims, demands and expenses (including legal fees) arising directly or indirectly out of any claim against XA Digital by any third party arising in respect of:

- (a) Any XA Digital Content or Deliverable produced to a specification provided by the Customer; or
- (b) Any Customer Content in whatever format; or
- (c) Any breach by the Customer of these Terms.

9 EMPLOYEES

9.1 The Customer will not and will ensure that none of its Associated Companies will engage at any time during the term of the Contract and for a period of 24 months following its termination any employee who was employed by XA Digital to provide the Services, whether as employee, consultant or independent contractor or in any other capacity without the prior written consent of XA Digital. If the Customer breaches this clause it will pay to XA Digital a sum by way of

compensation equivalent to the then current annual salary of the relevant employee or, if a higher amount, a sum equal to the charge out rate applicable to that employee for a six month period.

9.2 XA Digital reserves the right to adjust its charges to take account of any liabilities incurred by XA Digital as a result of a transfer to it of the Customer's or any other agency's employees under the Transfer of Undertakings (Protection of Employment) Regulations 2006.

10 SITE CONTENT

10.1 The Customer will ensure that all Customer and third party Content does not infringe any applicable laws, regulations or third party rights and does not include material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred, menacing, blasphemous or in breach of any third party Intellectual Property Rights (Inappropriate Content).

10.2 The Customer acknowledges that XA Digital has no control over any Customer or third party Content and does not monitor the Content. XA Digital reserves the right to remove Content from the relevant Deliverable and/or to suspend the operation of the Deliverable where it reasonably suspects such Content is Inappropriate Content.

10.3 The Customer will indemnify XA Digital against all damages, losses and expenses arising as a result of any action or claim that any of Customer or third party Content constitutes Inappropriate Content.

11 TERMINATION

11.1 Either party may terminate the Contract immediately by serving written notice on the other if:

(a) The other commits any material breach of these Terms which, if capable of remedy, is not remedied within 30 days of notice from that party specifying the breach and requiring its remedy;

or

(b) The other party convenes a meeting of creditors;

(c) A proposal is made in relation to the other party for a voluntary arrangement under Part 1 of the Insolvency Act 1986;

(d) A proposal is made for any other composition, scheme or arrangement with (or assignment for the benefit of) the other party's creditors;

(e) The other party is unable to pay its debts within the meaning of section 123 Insolvency Act 1986;

(f) A trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the assets of the other party; or

(g) A meeting is convened for the purpose of considering a resolution or other steps are taken for the winding-up of the other party or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).

(h) XA DIGITAL require 3 months notice regarding all on-going services

11.2 The provisions of Clauses 3, 6, 7, 8, 9 and 21 will survive the termination of these Terms and continue in full force and effect.

12 TRANSFER OR ASSIGNMENT

Neither party may assign or sub-license its rights under these Terms without the prior written consent of the other except as provided in these Terms.

13 NOTICES

13.1 All notices from one party to another under these Terms will be in writing, signed by a duly authorised person, and sent to the company secretary at the address specified in these Terms (or such other address as may be notified in writing by the party from time to time).

13.2 A notice will be deemed to have been received if served by hand, immediately upon personal delivery or if served by first class post, within 48 hours of posting to an address in the UK or within 96 hours otherwise.

14 SEVERABILITY

If any provision or part of these Terms is held to be invalid or unenforceable to any extent then it will be severed from the rest of these Terms so that it is ineffective to the extent that it is invalid or unenforceable and the remaining provisions or part of these Terms will remain in full force and effect.

15 WAIVER

The waiver by either party of any default or breach of these Terms will not constitute a waiver of any other or subsequent default or breach.

16 WHOLE AGREEMENT

The Contract, the sow and these Terms constitute the entire agreement between the parties in connection with the subject matter of the sow, and supersede all prior oral and written agreements, understandings and correspondence.

17 AMENDMENT

17.1 XA Digital may amend these Terms from time to time and each sow will be subject to the Terms current at the time the relevant sow is accepted.

17.2 An sow may be amended only by an agreement in writing signed by XA Digital and the Customer.

18 PUBLICITY

Each party may state in its publicity and marketing materials that the other is a provider or customer (as the case may be) of information services of the type described in these Terms.

19 FORCE MAJEURE

No cause of action will arise if the discharge of any duty is prevented or delayed, or accrual of any liability on the part of either party is occasioned, as the case may be, by any event beyond the control of that party including any of the following: act of God, governmental act, war, terrorism, fire, flood or other natural disaster, explosion or civil commotion, failure in information technology or telecommunications services, failure of a third party (including failure to supply data) and industrial action.

20 THIRD PARTY RIGHTS

Any person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce the Contract.

21 GOVERNING LAW

The Contract and these Terms will be governed by and interpreted in accordance with English Law and the parties agree to submit to the exclusive jurisdiction of the courts of England.