

Terms & Conditions

1. Interpretation

- 1.1. The definitions and interpretation set out in this condition 1 apply to the Contract:
 - 1.1.1. Contract: the agreement made between Tomorrow and the Client as set out in these Conditions;
 - 1.1.2. Client: the person, firm or company referred to in the Quotation who purchases Services;
 - 1.1.3. Client Material: all Documents, information and materials provided by the Client relating to the Services including (without limitation), computer programs, information, materials, copy, data, reports and specifications;
 - 1.1.4. Tomorrow: Dean Dolan of 20 Bugle Close, Salford, M7 2GP, trading as Tomorrow (the Agency).
 - 1.1.5. Deliverables: all Documents, products, digital content and/or materials in any form, including computer programs, data, reports and specifications (developed by Tomorrow or its agents or subcontractors) and delivered in relation to the Services;
 - 1.1.6. Digital Marketing Services: The Services as further described at condition 9 below;
 - 1.1.7. Document: includes, without limitation, in addition to any document in writing, any drawing, plan, diagram, design, picture or other image, proof, disk or other device or record embodying information in any form;
 - 1.1.8. Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
 - 1.1.9. Pre-existing Materials: all Documents, information and materials provided by Tomorrow relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications;
 - 1.1.10. Quotation: The cost for services provided by Tomorrow to the Client;
 - 1.1.11. Services: the services provided by Tomorrow under the Contract as set out in the Quotation, together with any other services which Tomorrow provides, or agrees to provide, to the Client;
- 1.2. These Conditions shall prevail over any Client terms of business offered by or on behalf of the Client, or implied by law, trade custom, practice or course of dealing. The Client's standard terms and conditions (if any) shall be deemed to be expressly rejected by Tomorrow.

2. Formation of the Contract

- 2.1. The acceptance of a Quotation for Services by Tomorrow constitutes an offer by the Client to purchase the Services specified in it on these Conditions. The Client will be deemed to have accepted a Quotation when it

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either signs the Quotation or otherwise communicates to Tomorrow that it has accepted the Quotation. The Contract is deemed to commence on the earlier of:

- 2.1.1. a written acknowledgement issued and executed by Tomorrow; or
 - 2.1.2. by Tomorrow starting to provide the Services.
- 2.2. Any Quotation is valid for a period of fourteen (14) days from its date, provided that Tomorrow has not previously withdrawn it in writing.
- 2.3. The Client acknowledges that it enters into the Contract in the course of its business and not as a consumer.

3. Commencement of the Services

- 3.1. The Services shall be provided by Tomorrow to the Client from the date agreed by the parties or if earlier the date referred to at condition 2.1.2.

4. Tomorrow's Obligations

- 4.1. Tomorrow shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Client, in accordance with the Quotation.
- 4.2. Tomorrow shall use reasonable endeavours to meet any performance dates specified in the Quotation, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

5. Client's Obligations

- 5.1. The Client shall:
 - 5.1.1. co-operate with Tomorrow in all matters relating to the Services;
 - 5.1.2. provide to Tomorrow, in a timely manner, such Client Material and other information as Tomorrow may reasonably require and ensure that such information is accurate in all material respects;
 - 5.1.3. ensure that all Client Material is owned by the Client, or, if not, ensure that the Client has permission from the legal owner to enable Tomorrow to legitimately use the Client material in the provision of the Services;
- 5.2. The Client acknowledges that the late supply of Client Material may have an impact on Tomorrow's ability to deliver the Services. If Tomorrow's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client, its agents, subcontractors, consultants or employees, Tomorrow shall not be liable for any costs, charges or losses sustained or incurred by the Client arising directly or indirectly from such prevention or delay.
- 5.3. The Client shall indemnify Tomorrow, from and against, all costs, charges or losses sustained or incurred by Tomorrow arising directly or indirectly from the Client's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to Tomorrow confirming such costs, charges and losses to the Client in writing.

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- 5.4. The Client shall indemnify Tomorrow against all losses, costs or charges it may incur arising as a result of any action, claim or threatened claim (as applicable) that Tomorrow's use of the Client Material in accordance with the Contract constitutes an infringement of the intellectual property rights of a third party .
- 5.5. The Client shall not, without the prior written consent of Tomorrow, at any time from the date of the Contract to the expiry of 6 (six) months after the last date of supply of the Services, solicit or entice away from Tomorrow or employ (or attempt to employ) any person who is, or has been, engaged as an employee, consultant or subcontractor of Tomorrow in the provision of the Services.
- 5.6. [Any consent given by Tomorrow in accordance with condition 5.5 shall be subject to the Client paying to Tomorrow a sum equivalent to 20% (twenty percent) of the then current annual remuneration of Tomorrow's employee, consultant or subcontractor or, if higher, twenty per cent (20%) of the annual remuneration to be paid by the Client to that employee, consultant or subcontractor.]

6. Charges And Payment

- 6.1. In consideration of the provision of the Services by Tomorrow, the Client shall pay the charges as set out in the Quotation.
- 6.2. Unless otherwise agreed in writing by Tomorrow and subject to condition 7.2 (where applicable), fifty per cent (50%) of the total price for the Services must be paid to Tomorrow prior to Tomorrow commencing the Services and fifty per cent (50%) of the total charges shall be paid by the Client to Tomorrow (without deduction or set-off) upon delivery following completion of the Services.
- 6.3. All invoices are payable on receipt of the invoice by the Client as payments dictate progression of the project at specific milestones. If invoices are not paid with immediate effect, Tomorrow has the right to desist working on the project until payment is made. Any other payment terms agreed between the Client and Tomorrow must be confirmed in writing by Tomorrow.
- 6.4. All charges quoted to the Client shall be exclusive of VAT, which Tomorrow shall add to its invoices at the appropriate rate;
- 6.5. Unless otherwise stated in writing any price and daily rate contained in the Quotation excludes:
 - 6.5.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred in connection with the Services, and the cost of any materials or disbursements. Such expenses, materials or disbursements shall be invoiced to the Client at cost; and
 - 6.5.2. VAT, which Tomorrow shall add to its invoices at the appropriate rate.
- 6.6. All additional work requested by the Client, which is requested following commencement of the Services and which is outside the scope of the Quotation (including any services necessarily procured in order to carry out the Services) shall be regarded as additional to the cost given in the Quotation and will be invoiced separately at the rates contained in the then current Tomorrow rate card.
- 6.7. All charges listed in Quotations are estimates and are subject to final confirmation of technical specification.
- 6.8. The Client shall be entitled to request up to two (2) amendments to the design work/artwork supplied for approval. Any amendments requested by the Client in addition to the two (2) permitted amendments will be deemed to be additional work and will be charged at Tomorrow's standard hourly fee rates.

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- 6.9. If the Client believes that the design work does not conform to the description then it shall notify Tomorrow within three (3) days of receiving the same. If no notification is received then the design work shall be deemed accepted and to conform to the description of the Services in every respect. For the purposes of this condition 6.9 Tomorrow's liability for defects in the Deliverables shall be limited to the replacement of the Deliverables at no additional cost to the Client. Provided always that such defect is notified to Tomorrow in accordance with this condition 6.90 and the Deliverables have been returned to Tomorrow for inspection.
- 6.10. Once the Client has approved the Deliverables all further design work requested by the Client will be charged in accordance with the current rate card of Tomorrow.
- 6.11. The parties agree that Tomorrow may review and increase its standard hourly fee rates at any time, provided that such charges cannot be increased more than once in any 12 (twelve) month period. Tomorrow will provide the Client with written notice of any such increase one (1) month before the proposed date of the increase. If such increase is not acceptable to the Client, it may, within two (2) weeks of such notice being received or deemed to have been received in accordance with this condition 6.11, terminate the Contract by giving three (3) months written notice to Tomorrow.
- 6.12. Without prejudice to any other right or remedy that it may have, if the Client fails to pay Tomorrow on the Due Date, Tomorrow may:
- 6.12.1. charge interest on such sum under the Late Payment of Commercial Debts (Interest) Act 1998; from the Due Date, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Client shall pay the interest immediately on demand; and
 - 6.12.2. suspend all Services until payment has been made in full.
- 6.13. Time for payment shall be of the essence of the Contract.
- 6.14. All sums payable to Tomorrow under the Contract shall become due immediately on its termination. This condition 6.14 is without prejudice to any right to claim for interest.
- 6.15. Tomorrow may, without prejudice to any other rights it may have, set off any liability of the Client to Tomorrow against any liability of Tomorrow to the Client.

7. Website Design and Development

- 7.1. Where requested by the Client, Tomorrow will design and build a website or develop the Client's website based on the brief agreed between the Client and Tomorrow.
- 7.2. Payment for the Services shall be made in accordance with condition 6 above. The balance of Tomorrow's charges must be paid prior to the website going live. If any charges are not paid on or before the date for payment, Tomorrow may suspend the provision of the Services and Tomorrow will not upload the website to the Client's server or supply the website files to the Client for use on any third party hosting server.
- 7.3. Once Tomorrow has been paid in full for its website design and development services, Tomorrow will provide a version of the Client's website to the Client for the Client's review and approval. If the Client believes that the website design and/or development does not conform to the brief then it shall notify Tomorrow within 3 (three) days of receiving the version of the website. If no notification is received within 3 (three) days of receiving the final version of the website then the website shall be deemed accepted and to conform to the

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description of the Services in every respect. Once approval has been given by any means, which can include by email or verbally, Tomorrow will release the website to the Client. On approval, Tomorrow will have no liability for any errors or downtime due to changes being made to the website by the Client or any third parties.

- 7.4. Tomorrow reserves the right to refuse to handle any material that it considers to be offensive, illegal or controversial.
- 7.5. Unless agreed otherwise, the Client agrees that Tomorrow shall be free to use any ideas, concepts, know how or techniques used in the construction of the Client's website for any purpose whatsoever, including, but not limited to, developing, manufacturing, and marketing products and any other items incorporating such information.

8. Website Hosting And Maintenance Services

- 8.1. Where requested by the Client, Tomorrow will procure website hosting and maintenance services. Tomorrow will use reasonable endeavours to provide a reliable and professional service.
- 8.2. Payment for hosting and maintenance must be paid in advance unless agreed otherwise, in which case, the Client must set up a standing order or direct debit to pay Tomorrow's charges on a monthly basis. Tomorrow reserves the right to deactivate the Client's website where the hosting and/or maintenance fees are not paid on time. Tomorrow may charge an administration fee, currently £87 (eighty seven pounds) for reactivating the Client's website.
- 8.3. Tomorrow cannot guarantee that website hosting will be available to the Client at all times, especially in the event of a failure beyond Tomorrow's control.
- 8.4. For the purpose of maintenance services, website hosting may have to be suspended for short periods of time. Tomorrow will endeavour to notify the Client of any such periods in advance.
- 8.5. As Tomorrow engage a third party for website hosting, Tomorrow will have no liability in respect of these services. Any issue or claim in relation to hosting should be made by the Client to the hosting company, details of which shall be provided to the Client by Tomorrow.

9. Digital Marketing, Search Engine Optimisation (SEO) and Pay Per Click (PPC) Services

- 9.1. Tomorrow will provide the Digital Marketing Services detailed in the Quotation. Such services shall include only initial SEO and PPC set-up and no ongoing SEO or PPC services shall be provided.
- 9.2. Tomorrow will use reasonable endeavours to improve the position of the Client's search engine results, but, do not guarantee any specific placement or higher placement on search engine results.
- 9.3. Tomorrow will have no liability for any changes in position of the Client's website on search engine results and the Client acknowledges that Tomorrow has no control over the policies of search engines with respect to the type of website and/or content that they accept or the way in which websites are ranked either now or in the future.
- 9.4. Where Tomorrow recommends that the Client takes certain technical actions in order to allow Tomorrow to provide the services detailed in this condition 9 then the Client agrees to implement such recommendations.

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Where the Client fails to do so it acknowledges that Tomorrow will not be liable for failing to perform such services.

10. Intellectual Property Rights

- 10.1. Save where agreed otherwise in writing (for example, where Tomorrow agree to licence the design and code of a website to the Client for an annual fee), all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials (excluding any Client Material) shall be owned by Tomorrow.
- 10.2. Subject to condition 10.4, Tomorrow licenses all such rights referred to in condition 10.1 to the Client free of charge and on a nonexclusive, worldwide basis to such extent as is necessary to enable the Client to make use of the website, the Deliverables and the Services. This licence is terminated with immediate effect as soon as any invoice becomes overdue. In the event that the Client wishes to use the Deliverables and/or any of the Intellectual Property Rights for purposes outside of the scope of the Contract, [as set out in the Quotation] prior to any such use the Client shall obtain the prior written agreement of Tomorrow on commercial terms to be agreed.
- 10.3. The Client grants Tomorrow a licence to the Client Material in order to provide the Services.
- 10.4. The Client acknowledges that where Tomorrow does not own the Pre-existing Materials, the Client's use of rights in Pre-existing Materials is conditional on Tomorrow obtaining a written licence from the relevant licensor.
- 10.5. The Client acknowledges that it is not the obligation of Tomorrow to search for registered trademarks or to contact the Intellectual Property Office on behalf of the Client unless specifically requested by the Client, agreed by Tomorrow within the contract and on confirmation of the quotation.

11. Limitation Of Liability

- 11.1. This condition 11 sets out the entire financial liability of Tomorrow (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Client in respect of: any breach of the Contract;
 - 11.1.1. any use made by the Client of the Services, the Deliverables or any part of them; and
 - 11.1.2. any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 11.2. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3. Nothing in these Conditions limits or excludes the liability of Tomorrow:
 - 11.3.1. for death or personal injury resulting from negligence; or
 - 11.3.2. for any damage or liability incurred by the Client as a result of fraud or fraudulent misrepresentation by Tomorrow.
- 11.4. Subject to condition 11.2 and condition 11.3 Tomorrow shall not be liable for loss of business; or loss of goods; or loss of contract; or loss of use, for example, including but not limited to the Client's website being

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unavailable; or loss of corruption of data or information; or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 11.5. Tomorrow's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to an amount equal to the charges paid for the Services in the twelve months immediately preceding the event which gave rise to the claim.

12. Data Protection

- 12.1. The Client agrees to comply with its obligations as a data controller under the provisions of the Data Protection Act 1998. The Client acknowledges and agrees Tomorrow will be a data processor for the purposes of the Data Protection Act 1998.

13. Termination

- 13.1. Either party may terminate the Contract without liability to the other on giving the other no less than 4 weeks written notice to the other party (with the exception of hosting contracts which require no less than 13 weeks notice):
- 13.2. Without prejudice to any other rights or remedies which the parties may have either party may terminate the Contract immediately upon written notice in the event that:
- 13.2.1. the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 (fourteen) days of that party being notified in writing of the breach; or
- 13.2.2. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- 13.2.3. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or
- 13.2.4. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; or
- 13.2.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

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- 13.2.6. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or
- 13.2.7. a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- 13.2.8. a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- 13.2.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
- 13.2.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 15.3.3 to condition 15.3.9 (inclusive); or
- 13.2.11. the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 13.3. Tomorrow may terminate the Contract on one month's written notice if there is a change of "control" of the Client (as defined in section 574 of the Capital Allowances Act 2001).
- 13.4. On termination of the Contract for any reason:
- 13.4.1. the Client shall immediately pay to Tomorrow all outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Tomorrow may submit an invoice, which shall be payable immediately on receipt;
- 13.4.2. the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 13.5. On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect: condition 10; condition 11; condition 12; condition 13; and condition 15.12.

14. Confidentiality And Tomorrow's Property

- 14.1. The Client shall keep in strict confidence all technical or commercial know how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by Tomorrow, its employees, agents, consultants or subcontractors and any other confidential information concerning Tomorrow's business or its products which the Client may obtain.
- 14.2. The Client may disclose such information:
- 14.2.1. to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Client's obligations under the Contract; and
- 14.2.2. as may be required by law, court order or any governmental or regulatory authority.

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- 14.3. The Client shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition
- 14.4. The Client shall not use any such information for any purpose other than to perform its obligations under the Contract.
- 14.5. All materials, equipment and tools, drawings, specifications and data supplied by Tomorrow to the Client (including Pre-existing Materials and Tomorrow's Equipment) shall, at all times remain the exclusive property of Tomorrow, but shall be held by the Client in safe custody at its own risk and maintained and kept in good condition by the Client until returned to Tomorrow, and shall not be disposed of or used other than in accordance with Tomorrow's written instructions or authorisation.

15. General

- 15.1. Tomorrow shall have no liability to the Client under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lockouts or other industrial disputes (whether involving the workforce of Tomorrow or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 15.2. No variation of the Contract or these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 15.3. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise.
- 15.4. If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected. If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 15.5. The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 15.6. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).
- 15.7. The Client shall not, without the prior written consent of Tomorrow, assign, any of its rights or obligations under the Contract. Tomorrow may at any time assign, or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

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- 15.8. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.9. A person who is not a party to the Contract shall not have any rights under or in connection with it either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 15.10. Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by prepaid first class post, recorded delivery or by commercial courier to the other party or as otherwise specified by the relevant party by notice in writing to the other party.
- 15.11. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract.