



GENERAL TERMS AND CONDITIONS

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Business Day	means a day other than a Saturday, Sunday or bank or public holiday;
Client	means the named party in the Contract which has agreed to purchase the Deliverables from Garrett Creative and whose details are set out in the Proposal;
Conditions	means Garrett Creative's terms and conditions of sale set out in this document;
Contract	means this agreement between Garrett Creative and the Client for the sale and purchase of the Deliverables incorporating these Conditions, the Order and the Proposal, and including all its schedules, attachments, annexures and statements of work;
Deliverables	means the Design Content or Website or any as the case may be to be supplied by Garrett Creative and as described in the Proposal;
Design Content	means logos, branding and other design materials to be supplied by Garrett Creative to the Client in accordance with the Contract;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving Garrett Creative's or its suppliers' workforce, but excluding the Client's inability to pay or circumstances resulting in the Client's inability to pay;
Garrett Creative	means Garrett Creative Limited (CRN: 12868094) whose registered office is 1-3 Gloucester Road, Bishopston, Bristol, BS7 8AA;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case: (a) whether registered or not

- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

Order means the Client’s order for the Deliverables as set out in the Proposal;

Price has the meaning given in clause 5.1;

Proposal means the specification for the Deliverables to be provided by Garrett Creative to the Client and which is agreed between the parties;

VAT means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables;

Website means the client’s site as defined in the Schedule as designed and/or developed under the Website Service; and

Website Service means the design and development services in relation to the website to be supplied by Garrett Creative to the Client (and where appropriate the ongoing support and maintenance of the website) pursuant to these Conditions and as set out in the Proposal, the specific terms of which are set out in the Schedule.

2 Application of these conditions

2.1 These Conditions (including the specific terms set out in the Schedule relating to the Website Service) apply to and form part of the Contract between Garrett Creative and the Client. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Client’s purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that Garrett Creative otherwise agrees in writing.

2.3 Garrett Creative may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:

2.3.1 Garrett Creative’s written acceptance of the Order; or

2.3.2 Garrett Creative delivering or performing the Deliverables or notifying the Client that they are ready to be delivered or performed (as the case may be).

3 Garrett Creative obligations

3.1 Garrett Creative shall provide the Deliverables to the Client in accordance with the Proposal.

- 3.2 Garrett Creative shall have the right to make any changes to the Deliverables which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Deliverables and Garrett Creative shall notify the Client in any such event.
- 3.3 Garrett Creative reserves the right to charge additional fees in the event:
 - 3.3.1 the Client varies the specification of the Deliverables contained in the Proposal;
 - 3.3.2 the Deliverables require the purchase of stock imagery and or fonts;
 - 3.3.3 there are errors in the Deliverables (both technical and/or typographical) which are as a result of:
 - (a) the Client providing inaccurate information to Garrett Creative; or
 - (b) malicious modification by a third party.

Such fees shall be notified in writing to the Client.

4 Client obligations

- 4.1 The Client shall:
 - 4.1.1 ensure that the terms of the Order and Proposal are complete and accurate;
 - 4.1.2 co-operate with Garrett Creative in all matters relating to the Deliverables;
 - 4.1.3 provide Garrett Creative with such information and materials (including but not limited to photographs, written copy, logos and other printed material) as Garrett Creative may reasonably require to supply the Deliverables, and ensure that such information is accurate in all material respects;
 - 4.1.4 ensure all information and materials provided to Garrett Creative is not dishonest, fraudulent, defamatory, libellous, threatening or harassing, obscene, indecent or pornographic;
 - 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Deliverables before the date on which the Deliverables are to be provided;
 - 4.1.6 comply with any required deadlines of Garrett Creative.
- 4.2 If Garrett Creative's performance of any of its obligations in respect of the Deliverables is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (Client Default):
 - 4.2.1 Garrett Creative shall without limiting its other rights or remedies have the right to suspend performance of the Deliverables until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Garrett Creative's performance of any of its obligations;
 - 4.2.2 Garrett Creative reserves the right to invoice the Client for any part or parts of the Deliverables completed at that point;

4.2.3 Garrett Creative shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Garrett Creative's failure or delay to perform any of its obligations as set out in this clause 4.2; and

4.2.4 the Client shall reimburse Garrett Creative on written demand for any costs or losses sustained or incurred by Garrett Creative arising directly or indirectly from the Client Default.

5 Price

5.1 The price for the Deliverables shall be as set out in the Proposal including where applicable any deposit. Where no such provision is set out, shall be calculated in accordance with Garrett Creative's scale of charges in force from time to time (the **Price**).

5.2 The Prices are exclusive of VAT.

5.3 The Client shall pay any applicable VAT to Garrett Creative on receipt of a valid VAT invoice.

6 Payment

6.1 Garrett Creative shall invoice the Client for the Deliverables, in accordance with the Proposal.

6.2 The Client shall pay all invoices:

6.2.1 in full without deduction or set-off, in cleared funds and in accordance with the payment terms set out in the Proposal; and

6.2.2 to the bank account nominated by Garrett Creative.

6.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:

6.3.1 Garrett Creative may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Bank of England from time to time in force;

6.3.2 Suspend the provision of the Deliverables until payment has been made in full; and

6.3.3 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

7 Delivery and performance of the Digital Content

7.1 Design Content shall be delivered by Garrett Creative:

7.1.1 by email which contains a download link or file ; and

7.1.2 on the date(s) specified in the Proposal.

7.2 Time is not of the essence in relation to the delivery of the Deliverables. Garrett Creative shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only.

7.3 Garrett Creative shall not be liable for any delay in or failure of performance caused by:

- 7.3.1 the Client's failure to provide Garrett Creative with adequate instructions for performance or delivery;
- 7.3.2 the Client's failure to download the Digital Content from the files or links provided and which have been acknowledged as received by the Client;
- 7.3.3 Force Majeure.

8 Risk and Title

- 8.1 Risk in the Deliverables shall pass to the Client on delivery.
- 8.2 Title to the Deliverables shall pass to the Client once Garrett Creative has received payment in full and cleared funds for the Deliverables.

9 Limitation of liability

- 9.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 9.
- 9.2 Subject to clause 9.5, the total liability of Garrett Creative howsoever arising under or in connection with this Contract, shall be limited to the Price set out in the Proposal.
- 9.3 Subject to clause 9.5, Garrett Creative shall not be liable for consequential, indirect or special losses nor shall Garrett Creative be liable for any of the following (whether direct or indirect):
 - loss of profit; loss of or corruption to data; loss of use; loss of production; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill.
- 9.4 Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:
 - 9.4.1 death or personal injury caused by negligence;
 - 9.4.2 fraud or fraudulent misrepresentation; or
 - 9.4.3 any other losses which cannot be excluded or limited by applicable law.

10 Intellectual property

- 10.1 All Intellectual Property Rights in the Deliverables arising in connection with this Contract shall be the property of the Client. Garrett Creative shall assign absolutely all such Intellectual Property Rights to the Client upon receipt of the final payment by the Client. The parties shall execute all documents necessary to give effect to this clause 10.1.
- 10.2 Garrett Creative reserves the right to display and make reference to the Deliverables provided to the Client on its website and include the Client's trademarks and logos in its marketing activities (where the Client has provided its express consent in writing).

11 Data Protection

- 11.1 All personal information that Garrett Creative may use will be collected, processed, and held in accordance with the provisions of EU Regulation 2016/679 General Data Protection Regulation (“GDPR”) and the Client’s rights under the GDPR.
- 11.2 For complete details of Garrett Creative’s collection, processing, storage, and retention of personal data including, but not limited to, the purpose(s) for which personal data is used, the legal basis or bases for using it, details of the Client’s rights and how to exercise them, and personal data sharing (where applicable), please refer to Garrett Creative’s Privacy Notice available from https://garrettcreative.co.uk/about/#policy_terms

12 Force majeure

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 90 days, or either party may terminate the Contract by written notice to the other party.

13 Termination

- 13.1 Either party may, without prejudice to its other rights and remedies, by notice in writing to the other party, immediately terminate this Agreement if the other:
- 13.1.1 is in material or persistent breach of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 14 days after receiving written notice requiring it to remedy that breach; or
- 13.1.2 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.
- 13.2 Garrett Creative may without prejudice to its other rights and remedies, by notice in writing to the Client, immediately terminate this Agreement if the Client fails to pay any sum due under the terms of this Agreement and such sum remains unpaid for 14 days after written notice from us that such sum has not been paid.
- 13.3 In the event of termination of this Agreement for any reason:
- 13.3.1 the Client will immediately pay all monies then outstanding;
- 13.3.2 Garrett Creative shall promptly invoice the Client for all Deliverables supplied and Website Services performed to the date of termination that have not yet been invoiced and payment for such invoices shall be due immediately on receipt by the Client. In the event Deliverables or Website Services have yet to be supplied but any agreed milestones (whether in the

Proposal or as detailed in the agreed delivery schedule) have been met by Garrett Creative, Garrett Creative shall be entitled to charge a pro-rata fee for the work undertaken as at the date of termination. The pro-rated fee will be calculated on our variable* hourly rate but shall not exceed the agreed Price. *Details provided on request.

- 13.3.3 the Client will immediately cease use of the Deliverables including any equipment or software;
- 13.3.4 each party shall within seven days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information;
- 13.3.5 the accrued rights and liabilities of the parties will not be affected; and
- 13.3.6 clauses which expressly or by implication are to survive termination will do so.

14 General

- 14.1 **Entire agreement:** The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter. Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract. Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 14.2 **Variation:** No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.
- 14.3 **Assignment and sub-contracting:** Garrett Creative may at any time assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights under this Contract, provided that it gives prior written notice to the Client. The Client shall not assign, sub-contract, transfer, mortgage, charge, declare a trust of or deal in any other manner with any or all of its rights under this Contract, in whole or in part, without Garrett Creative's prior written consent (such consent not to be unreasonably withheld or delayed).
- 14.4 **No partnership or agency:** The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 14.5 **Severance:** In the event that one or more of the provisions of these Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of these Conditions. The remainder of these Conditions shall be valid and enforceable.
- 14.6 **Waiver:** No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 14.7 **Compliance with law:** Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under this Contract, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach of this clause 14.7 to the extent that such breach is directly caused or contributed to by any breach of this Contract by the other party (or its employees, agents and representatives).
- 14.8 **Third party rights:** A person who is not a party to this Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Contract.

- 14.9 **Governing law:** This Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 14.10 **Jurisdiction:** The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Contract, its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE – WEBSITE SPECIFIC TERMS AND CONDITIONS

The purpose of this Schedule in addition to the standard Conditions above, is to set out specific provisions relating to the Website Services we may provide to you.

1 Definitions:

1.1 In this Schedule the following definitions shall apply:

Acceptance	the point when the Website has been finished in line with the Proposal and is online ready to go “live” and is accepted or deemed accepted by the Client as provided by paragraph 3 below;
Acceptance Testing	means the testing of the Website carried out in accordance with paragraph 3;
Client Materials	the content (including text, copy, audio material and graphics) provided to Garrett Creative by the Client from time to time for incorporation in the Website;
Domain Name	the root address of the Website e.g. www.webaddress.com
Host	means the third party on whose system the Website physically resides;
Installation	means installation of the Website on the Internet by the uploading of all necessary files to the Host;
Search Engines	means a website which contains a directory of websites on the internet enabling users to find websites by subject matter classification;
Website	means a collection of web pages and associated code which forms an integrated presence.

2 Supply of the Website:

- 2.1 Garrett Creative shall provide the Website Services to the Client in accordance with the Proposal.
- 2.2 Garrett Creative shall not be responsible for the ongoing functionality or maintenance of the Website upon completion of the Website Services where this has not been included in the Proposal.
- 2.3 No registration of the Website with Search Engines will be undertaken unless otherwise agreed with the Client. Garrett Creative further provides no guarantee that the Website will become listed with Search Engines.

3 Acceptance Testing

- 3.1 Within 28 days of Garrett Creative completing the Website in line with the Proposal (**Completion**), the Client shall carry out Acceptance Testing of the Website. The Client shall complete the Acceptance Testing within 14 days of commencing the Acceptance Testing. The Client shall proofread and fully test the Website before confirming to Garrett Creative whether they accept the Website or not. If the Client accepts the Website, Acceptance shall be deemed to have been successful. If the Client does not accept the Website then the Website shall be corrected in accordance with paragraph 3.2 below.
- 3.2 In the case of failure of the Acceptance Testing due to any act or omission of Garrett Creative, Garrett Creative will promptly use all reasonable endeavours to make any necessary corrections free of charge. In the case of failure of the Acceptance Testing due to any defect in the Content or act or omission of the Client (**Client Defects**), the Client will be responsible at its own cost and without delay for making any corrections to resolve Client Defects reasonably required by Garrett Creative.
- 3.3 Upon completion of the corrections of the Website by either party in accordance with paragraph 3.3 (**Corrections Completion**), the Client shall within 14 days of the Corrections Completion carry out further Acceptance Testing. Upon completion of the further Acceptance Testing the Client shall confirm whether it accepts the Website or not in accordance with paragraph 3.1.
- 3.4 Any additional services or products of Garrett Creative that are required by the Client to make any corrections due to Client Defects will be subject to additional charges as advised by Garrett Creative.
- 3.5 Use of the Website by the Client other than for Acceptance Testing will be deemed to be Acceptance.

4 Domain names

- 4.1 Any Domain Name purchased on behalf of the Client shall belong to the Client. The Client shall ensure that they have due title to the Domain Name. The Client agrees to indemnify and hold harmless Garrett Creative from any claim resulting from the registration of the Client's Domain Name and further use of the Domain Name by the Client including but not limited to any breach of intellectual property rights of third parties.
- 4.2 The Domain Name will be registered with a third party and as such the Client shall agree to fully abide by the terms and conditions set out by the third party for such services. Any support relating to the domain name, hosting and email services is between the Client and the third party service.
- 4.3 Any modifications needed to the domain name or hosting services are to be made between the Client and third party service.

5 Hosting of Website

- 5.1 If the Client has requested Garrett Creative to host the Website, this service will be provided by Garrett Creative's third party provider Tandem Support. As such any hosting will be subject to Tandem Support's terms and conditions and any modifications needed to the hosting service are to be made between the Client and the third party provider.

6 Site content

- 6.1 The Client shall ensure that the Client Materials do not infringe any applicable laws, regulations or third party rights (including 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**).

- 6.2 Where a Client has entered into a separate agreement for support and maintenance of the Website, Garrett Creative shall update the Website with Client Materials provided from time to time by the Client.
- 6.3 Garrett Creative shall grant the Client access to the server and content management system (CMS) where appropriate, in order to update information held on the Website.
- 6.4 The Client acknowledges that Garrett Creative has no control over any content placed on the Website by visitors and does not purport to monitor the content of the Website. Garrett Creative reserves the right to remove content from the Website where it reasonably suspects such content is Inappropriate Content. Garrett Creative shall notify the Client promptly if it becomes aware of any allegation that any content on the Website may be Inappropriate Content.
- 6.5 The Client shall indemnify Garrett Creative against all damages, losses and expenses arising as a result of any action or claim that the Client Materials constitute Inappropriate Content.
- 6.6 Garrett Creative may include the statement "Designed by Garrett Creative" on the Website in a form to be agreed.