

## Terms & Conditions

Last updated 10th October 2020

### 1. DEFINITIONS AND INTERPRETATION

1.1. Throughout this agreement, we use defined terms. These are words that have been capitalised and refer to the defined terms as set out in clause 14.

1.2. When we refer to 'you' 'your' or the 'client', we are referring to the person to whom the Final Proposal Document is addressed. If this is an individual, then we are providing the services to you personally and you will be responsible for our costs and charges. If there is more than one individual then we are providing to each of those on the basis of a partnership, for which all partners are jointly and severally liable for our costs. If we refer to a limited company (Ltd) or a limited liability partnership (LLP) then it is to that entity that we are taking our instructions from. If you are commissioning our services on behalf of a company, then it is your responsibility to ensure that the party named on the Final Proposal Document is true and accurate.

1.3. When we refer to 'us' 'our' or 'JAYBEE', we are referring to JayBee Marketing. We are a limited company registered in England and Wales with company number 11349912 and our registered office is: Bond House, Goodwood Road, London SE14 6FE, UK.

1.4. Where we use a reference to the singular then it shall also include the plural. A reference to one gender shall include the other.

1.5. Where we refer to any legislation, for example the Data Protection Act, then it is a reference to legislation as it is in force as at the date of this agreement and to any sub-ordinate legislation that has been made under it.

1.6. Where any words are following the terms 'including', 'include', 'in particular' or 'for example' they shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;

### 2. BASIS OF CONTRACT

2.1. JAYBEE will provide the Client with a Final Proposal Document which will constitute an offer to purchase Services in accordance with these Conditions and on the basis of the work set out in the Final Proposal Document.

2.2. At the time of:

- (a) the Client signing and dating a copy of the Final Proposal Document;
- (b) the Client paying the invoice in accordance with the Final Proposal Document;
- (c) JAYBEE commencing work on your instructions (whether or not all works are completed and/or submitted to the Client); or

(d) the Client informing (by letter, email or any other form of recognised communication) JAYBEE that they are happy with the Final Proposal Document;

a legally binding Contract is formed between the Client and JAYBEE to carry out the Services as set out in the Final Proposal Document. At this point the Contract shall come into existence and that point shall constitute the Commencement Date.

2.3. You warrant that you will be purchasing the Services of JAYBEE for business use and as such you have no right of cancellation following the Commencement Date. In the event that you do wish to cancel the Services then JAYBEE reserves the right to charge for the Services undertaken to date, this is in order to protect JAYBEE who will budget and allocate time and resources to the Client or Project and may not be in a position to obtain substitute work.

2.4. Any quotation given by JAYBEE is only valid for a period of 30 days from its date of issue.

2.5. In the event that a project or service is provided on a continuing basis and JAYBEE, during the lifetime of the project, makes changes to these Conditions, JAYBEE shall notify the Client. The Client is deemed to have accepted the changes unless they have notified JAYBEE of non-acceptance within a period of 30 days from the date of issue. In the event of disagreement with any revised terms and conditions then these Conditions shall continue to apply unless otherwise agreed.

### **3. CHANGES TO SCOPE**

3.1. The price set out in our Final Proposal Document is based on the length of time that JAYBEE anticipates will need to be spent on your project, or in case of a subscription service the amount of hours in order to accomplish everything that you would like to achieve. Should you wish to alter your instructions at a later date or add anything new, JAYBEE are flexible and happy to accommodate. If the Client would like to add anything new that has not previously been covered by the Final Proposal Document, JAYBEE will provide a separate estimate which will cover the additional work.

3.2. Please note that this initial Contract is for a minimum amount of work and you shall not be able to reduce Charges that have already been agreed by reducing the amount of work to be carried out without our prior consent.

3.3. Acceptance of any additional services to be provided shall be dealt with in the same manner as set out in 2.2

#### **4. SUPPLY OF SERVICES**

- 4.1. The Services shall be subscription or project based depending on the Client's individual tailored needs as described in the Final Proposal Document.
- 4.2. JAYBEE shall supply the Services to the Client in accordance with the Final Proposal Document in all material respects.
- 4.3. JAYBEE shall use all reasonable endeavours to meet any performance dates specified in the Final Proposal Document, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. Performance is dependent on the Client meeting the Client Obligations as set out in Clause 5.
- 4.4. JAYBEE shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and JAYBEE shall notify the Client in any such event.
- 4.5. Where JAYBEE sub-contracts any aspects of the Services it will monitor all companies and suppliers to whom work is sub-contracted to ensure that:
- a) All deadlines are met and that all agreed budgets are not exceeded;
  - b) All necessary consents, clearances and licences are obtained;
  - c) All necessary consents, clearances and licenses are obtained in respect of copyright and any other rights in all the constituent elements of the Services.

#### **5. CLIENT OBLIGATIONS**

- 5.1. The Client confirms that they have the authority to enter into this Contract on behalf of themselves, the partnership, or if applicable, the Company or Limited Liability Partnership to whom the Final Proposal Document has been addressed.
- 5.2. The Client shall:
- 5.2.1. Ensure that any information provided throughout the Final Proposal Document is complete and accurate and reflects the Services that the Client wants to purchase;
  - 5.2.2. co-operate with JAYBEE in all matters relating to the Services;
  - 5.2.3. provide JAYBEE, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by JAYBEE;
  - 5.2.4. provide JAYBEE with such information and materials as JAYBEE may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
  - 5.2.5. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start and until delivery of the project (this includes ensuring that any data has been collected and provided in a manner consistent with the provisions of

the Data Protection Act, or any intellectual property rights with regards to designs and materials are provided without infringement of a third parties rights under the Copyright, Design and Patents Act 1988);

5.2.6. comply with any additional obligations as set out in the Final Proposal Document;

5.2.7. provide JAYBEE with clear, timely and accurate instructions in order for the Services to be provided in a timely manner; and Review JAYBEE's work and provide feedback and/or approval within 7 days.

## **6. PRICE OF SERVICE(S)**

6.1. The price of the Service(s) shall be as set out in the Final Proposal Document.

6.2. The price shall be paid in the values as set out in the Final Proposal Document. Upon taking a subscription service, we request payment within 7 days of invoice submission. For projects, we request a deposit of 50% before commencing any work. For both subscription and projects, JAYBEE will not commence any work until this is paid.

6.3. In the event of late or non-payment, JAYBEE has the right to cease to provide the Services and/or limit access to the Services already supplied. JAYBEE will not be responsible for any delays in meeting milestones set out in the Final Proposal Document in the event of cessation of services due to non-payment.

6.4. Under the subscription based service, all work agreed with JAYBEE will be non-refundable. This is in order to protect JAYBEE who will budget and allocate time and resources to the Client or project.

6.5. All prices shall be exclusive of VAT unless specifically stated throughout the Final Proposal Document or Quotation.

## **7. LIABILITY**

7.1. The liability that JAYBEE has under these Conditions shall be limited to the fees payable in respect of the Services to be provided, and where applicable, to each element of those.

7.2. This is a commercial agreement and accordingly we exclude liability under Sale of Goods Act 1979 and Sale of Goods and Supply of Services Act 1982 to the extent permitted (we do not exclude liability for anything that cannot be excluded by law). We will not be liable to you or any third party for damages, including lost profits, lost savings or other incidental, consequential or special damages, whether or not foreseeable (including, but not limited to, any failure to perform in a timely manner).

7.3. You will indemnify and hold us harmless from all claims and losses arising from any information, material, data or documents supplied by you under this Contract (including any third party intellectual property claims).

## **8. INTELLECTUAL PROPERTY**

8.1. The Client guarantees that all elements of text, images or any other art work provided to JAYBEE are either owned by the Client, or that they have permission to use them and that the Client has ensured that the Company/service name is legally available before instructing JAYBEE.

8.2. All Intellectual Property Rights in the Services shall remain vested in and the absolute property of JAYBEE.

8.3. For projects, once your final payment has been received we will provide you with the completed product as set out in the Final Proposal Document. You will have the exclusive rights to the product for your business and we will not use it other than under clause 8.7.

8.4. You are not permitted to edit the artwork save in accordance with clause 8.6 and as such we retain the copyright, moral rights and master files.

8.5. If regular monthly or final payment is delayed or issues arise regarding non-payment, we reserve the right to reuse or amend concepts to be used for other projects.

8.6. You are restricted from editing, amending, modifying or replicating the final product in any way except in accordance with our applicable guidelines in place from time to time. This is important for us to preserve the quality of our work. Any such editing, amending, modifying or replicating will constitute a breach of this agreement and further sums will become payable.

8.7. We reserve the right to be credited as the author of any part of the Services and, with your permission, to showcase any part of the Services in a self-promotional capacity via online or printed media at any stage unless otherwise agreed in writing.

## **9. GENERAL**

9.1. Force Majure:

Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control. This includes a failure of any software, app or hosting provider in allocating sufficient resources or any electrical or server failures.

9.2. Assignment and other dealings:

JAYBEE may at any time assign its right under the Contract and may subcontract or delegate in any manner in any or all of its obligations under the Contract to any third party or agent. This may include in house staff and freelancers with specialist skills. The Client shall not assign or transfer this Contract to anybody else without the prior written consent of JAYBEE.

9.3. Confidentiality:

9.3.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, clients or other commercially sensitive information of the other party, except as permitted by clause 9.3.2.

9.3.2. Each party may disclose the other party's confidential information:

9.3.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause; and

9.3.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.3.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

9.4. Entire Agreement:

These Conditions and the Final Proposal Document between JAYBEE and the Client form the entire agreement and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Any changes to the Services shall require a new Estimate.

9.5. Variation:

No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

9.6. Waiver:

9.6.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

9.6.1.1. waive that or any other right or remedy; or

9.6.1.2. prevent or restrict the further exercise of that or any other right or remedy.

9.7. Severance:

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

9.8. Third Parties:

No one other than a party to the Contract shall have any right to enforce any of its terms.

9.9. Governing Law and Jurisdiction:

This Contract is a legal document governed by the law of England and Wales and any dispute will be dealt with under exclusive jurisdiction of the English and Welsh Courts.

## **10. DATA PROTECTION**

10.1. JAYBEE warrants that, to the extent it processes any Personal Data on behalf of the Client:

10.1.1. it shall act only on instructions from the Client; and

10.1.2. it has in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

## **11. ELECTRONIC SIGNATURE**

All information communicated on the Website is considered an electronic communication. When you communicate with JAYBEE through or on the Website or via other forms of electronic media, such as e-mail, you are communicating with the company electronically. You agree that we may communicate electronically with you and that such communications, as well as notices, disclosures, agreements, and other communications that we provide to you electronically, are equivalent to communications in writing and shall have the same force and effect as if they were in writing and signed by the party sending the communication.

## **12. TESTIMONIALS, REVIEWS, PICTURES & VIDEOS**



JAYBEE is pleased to hear from users and customers and welcomes your comments regarding our services and products. JAYBEE may use testimonials and/or product reviews in whole or in part together with the name and address of the person submitting it.

Testimonials may be used for any form of activity relating to JAYBEE's services or products, in printed and online media as JAYBEE determines in its sole and exclusive discretion.

Testimonials represent the unique experience of the participants and customers submitting the testimonial and do not necessarily reflect the experience that you and your business may have using our services or products.

\*Note that testimonials, photographs, and other information that you provide to us will be treated as non-confidential and non-proprietary, and, by providing them, you grant JAYBEE a royalty-free, worldwide, perpetual, non-exclusive and irrevocable license to use them.

Additionally, JAYBEE reserves the right to correct grammatical and typing errors, to shorten testimonials prior to publication or use, and to review all testimonials prior to publication or use. JAYBEE shall be under no obligation to use any, or any part of, any testimonial or product review submitted.

### **13. INDIVIDUAL RESULTS WILL VARY**

Every business is different, employing different strategic approaches and organizational structures, and offering different products and services. Therefore, individual results will vary from client to client. Your business' individual results will vary depending upon a variety of factors unique to your business and market forces beyond JAYBEE's control including but not limited to your business model, product and service offerings.



## 14. CONTACTING US

We encourage our customers to contact us with questions or comments about our products and services. Please feel free to do so by sending an email to: [admin@jaybeemarketing.com](mailto:admin@jaybeemarketing.com)

## 15. DEFINITIONS

**The following words shall have the following meanings:**

**Business Day:**

A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Charges:**

The charges payable by the Client for the supply of a Service or Services.

**Commencement Date:**

As set out in clause 2.2.

**Conditions:**

These terms and conditions as amended from time to time in accordance with clause 2

**Contract:**

The contract between JAYBEE and the Client for the supply of a Service or Services in accordance with these Conditions.

**Client:**

The person or firm who purchases a Service or Services from JAYBEE.

**Estimate:**

A written estimate detailing the price anticipated for the Service or Services.

**Final Proposal Document:**

This means a final version of the Project proposal document agreed between us (and signed), or where a project proposal document has not been provided on the matter then the quotation that we provide. In both cases, outlining exactly what Service or Services will be provided, the estimated price that has been agreed and the anticipated timescale. This shall include the description or specification of the Service or Services provided by JAYBEE to the Client.

**Intellectual Property Rights**

Intellectual property found in digital marketing assets includes creative works subject to copyright protection, as well as words, phrases, sentences and designs functioning as trademarks. Digital marketing assets containing intellectual property may include:

- ⇒ a website including the domain name and its content;
- ⇒ social media accounts and postings; and
- ⇒ online advertisements and campaigns.



**Personal Data:**

As defined in the Data Protection Act 1998.

**Services:**

The Service or Services supplied by JAYBEE to the Client as set out in the Final Proposal Document, or any other mutual means of communication by which such an agreement has been reached..

END OF POLICY